













**THE  
LAWS OF ENGLAND.**

**VOLUME IX.**



# THE LAWS OF ENGLAND

BEING

A COMPLETE STATEMENT OF THE WHOLE  
LAW OF ENGLAND.

BY

THE RIGHT HONOURABLE THE  
EARL OF HALSBURY  
LORD HIGH CHANCELLOR OF GREAT BRITAIN,  
1885-86, 1886-92, and 1895-1905,

AND OTHER LAWYERS.

VOLUME IX

*COURTS.*

*CRIMINAL LAW  
AND PROCEDURE.*

LONDON:

BUTTERWORTH & CO, 11 & 12, BELL YARD, TEMPLE BAR.

*Law Publishers.*

1902.

**Printed in England**  
**BY**  
**WILLIAM CLOWES & SONS LIMITED,**  
**LONDON AND BECCLES**



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THE RIGHT HONOURABLE THE  
**EARL OF HALSBURY,**  
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**In this Volume the Law is stated as at August 10th, 1909.**



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| <i>Companies, Offences re-</i> | - | - | COMPANIES.                                    |
| <i>lating to</i>               | - | - | PRISONS.                                      |
| <i>Convicts</i>                | - | - | CORONERS.                                     |
| <i>Coroners' Courts</i>        | - | - | LUNATICS AND PERSONS OF UNSOUND MIND          |
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| <i>Inebriate Reformatories</i>                       | - | - | "                | PRISONS                               |
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| <i>Sheriffs</i>                                      | - | - | "                | SHERIFFS AND BAILIFFS                 |
| <i>Slander, Criminal</i>                             | - | - | "                | LIBEL AND SLANDER                     |
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NOTE.—For Crimes and Offences not included in the above tables see the appropriate titles—*e g*, Cruelty to Animals will be found under title ANIMALS. Corrupt Practices under title ELECTIONS, and so on

## CROPS AND GROWING PRODUCE.

*See* AGRICULTURE, LANDLORD AND TENANT, SALE OF LAND.

## CROWN LANDS

*See* CONSTITUTIONAL LAW.

# ABBREVIATIONS

## USED IN THIS WORK.

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|                        |   |
|------------------------|---|
| A C (preceded by date) | Law Reports, Appeal Cases, House of Lords, since 1890 ( <i>e.g.</i> [1891] A. C.) |
| A -G                   | Attorney-General  |
| Act                    | Acton's Reports, Prize Causes, 2 vols, 1809—1811                                  |
| Ad & El                | Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols, 1811—1842  |
| Adam                   | Adam's Justiciary Reports (Scotland), 1893—(current)                              |
| Add                    | Addams' Ecclesiastical Reports, 3 vols, 1822—1828                                 |
| Adv -Gen.              | Advocate-General  |
| Alc & N                | Alcock and Napier's Reports, King's Bench (Ireland), 1 vol, 1813—1833             |
| Alc Reg Cas            | Alcock's Registry Cases (Ireland), 1 vol, 1832—1841                               |
| Aleyn                  | Aleyn's Reports, King's Bench, fol, 1 vol, 1616—1649                              |
| Amb                    | Ambler's Reports, Chancery, 2 vols, 1725—1783                                     |
| And                    | Anderson's Reports, Common Pleas, fol, 1 vol, 1536—1605                           |
| Andr                   | Andrews' Reports, King's Bench, fol, 1 vol, 1737—1740                             |
| Anon                   | Anonymous   |
| Anst                   | Anstruther's Reports, Exchequer 3 vols, 1792—1797                                 |
| App Cas                | Law Reports, Appeal Cases, House of Lords, 15 vols, 1875—1890                     |
| Aikley                 | Aikley's Justiciary Reports (Scotland), 1 vol, 1846—1848                          |
| Arm M & O              | Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842  |
| Arn                    | Arnold's Reports, Common Pleas, 2 vols, 1838—1839                                 |
| Arn & H                | Arnold and Hodges' Reports, Queen's Bench, 1 vol, 1840—1841                       |
| Asp M L O              | Aspinall's Maritime Law Cases, 1870—(current)                                     |
| Atk                    | Atkins' Reports, Chancery, 3 vols, 1736—1754                                      |
| Ayl Pan                | Ayliffe's New Pandect of Roman Civil Law  |
| Ayl. Par               | Ayliffe's Parergon Juris Canonici Anglicani                                       |
| B & Ad                 | Barnewall and Adolphus' Reports, King's Bench, 5 vols, 1830—1834                  |
| B & Ald.               | Barnewall and Alderson's Reports, King's Bench, 5 vols, 1817—1822                 |
| B & C.                 | Barnewall and Cresswell's Reports, King's Bench, 10 vols, 1822—1830               |
| B & S.                 | Best and Smith's Reports, Queen's Bench, 10 vols, 1861—1870                       |
| Bac. Abr               | Bacon's Abridgment  |
| Bail Ct. Cas           | Bail Court Cases (Lowndes and Maxwell), 1 vol, 1852—1854                          |
| Ball & B.              | Ball and Beatty's Reports, Chancery (Ireland), 2 vols, 1807—1814                  |
| Bankr. & Ins. R.       | Bankruptcy and Insolvency Reports, 2 vols, 1853—1855                              |

|                       |   |
|-----------------------|---|
| Bar. & Arn.           | Barron & Arnold's Election Cases, 1 vol, 1843—1846  |
| Bar. & Aust.          | Barron & Austan's Election Cases, 1 vol., 1842  |
| Barn (CH)             | Barnardiston's Reports, Chancery, fol, 1 vol., 1740—1741  |
| Barn (K B)            | Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734                                      |
| Barnes                | Barnes' Notes of Cases of Practice, Common Pleas, 1 vol, 1732—1760                                  |
| Batt                  | Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826  |
| Beat                  | Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830   |
| Beav                  | Beavan's Reports, Rolls Court, 36 vols, 1838—1866   |
| Beav & Wal.           | Beavan and Walford's Railway Parliamentary Cases, 1 vol, 1846                                       |
| Beaw                  | Beawes's Lex Mercatoria   |
| Bellewe ..            | Bellewe's Cases temp Richard II, King's Bench, 1 vol  |
| Bell, C C.            | T. Bell's Crown Cases Reserved, 1 vol, 1858—1860  |
| Bell, Ct. of Sess     | E Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792                                  |
| Bell, Ct. of Sess fol | E Bell's Decisions, Court of Session (Scotland), fol., 1 vol, 1794—1795                             |
| Bell, Dict Dec        | S S Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols, 1805—1833                  |
| Bell, Sc App          | S S Bell's Scotch Appeals, House of Lords, 7 vols, 1842—1850  |
| Belt's Sup            | Belt's Supplement to Vesey Sen, Chancery, 1 vol., 1746—1756   |
| Benl                  | Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol, 1 vol, 1515—1627               |
| Ben. & D.             | Benloe and Dalison's Reports, Common Pleas, fol, 1 vol, 1557—1579                                   |
| Bing                  | Bingham's Reports, Common Pleas, 10 vols, 1822—1834   |
| Bing (N. C)           | Bingham's New Cases, Common Pleas, 6 vols, 1834—1840  |
| Bitt. Prac. Cas       | Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol, 1875—1876  |
| Bitt. Rep in Ch.      | Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884                        |
| Bl. Com               | Blackstone's Commentaries   |
| Bl. D. & Osb          | Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol, 1846—1848        |
| Blh                   | Bligh's Reports, House of Lords, 4 vols., 1819—1821   |
| Bh (N S)              | Bligh's Reports, House of Lords, New Series, 11 vols, 1827—1837                                     |
| Bos & P               | Bosanquet and Puller's Reports, Common Pleas, 3 vols, 1796—1804                                     |
| Bos & P (N R)         | Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807                                |
| Bract.                | Bracton De Legibus et Consuetudinibus Angliæ  |
| Bro. Abr              | Sir J Brooke's Abridgment   |
| Bro C. C.             | W Brown's Chancery Reports, 4 vols, 1778—1794   |
| Bro Eco. Rep          | W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol, 1850—1872                              |
| Bro. (N C)            | Sir R Brooke's New Cases, 1 vol, 1515—1558  |
| Bro. Parl Cas.        | J Brown's Cases in Parliament, 8 vols, 1702—1808  |
| Bro. Supp. to Mor.    | M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols. |
| Bro Synop.            | M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1832—1827                |
| Brod. & Bing.         | Brodarip and Bingham's Reports, Common Pleas, 3 vols, 1819—1822                                     |

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|------------------------|----|----|--|
| Bred. & F.             | .. | .. | Brodrick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol, 1705—1864 |
| Broun                  | .. | .. | Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845                        |
| Brown. & Lush.         | .. | .. | Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866                  |
| Brownl.                | .. | .. | Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1580—1624           |
| Bruce                  | .  | .. | Bruce's Decisions, Court of Session (Scotland), 1714—1715                        |
| Buchan                 | .  | .  | Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813        |
| Buck                   | .  | .  | Buck's Cases in Bankruptcy, 1 vol, 1816—1820                                     |
| Bulst.                 | .  | .. | Bulstrode's Reports, King's Bench, fol, 3 parts in 1 vol, 1610—1626              |
| Bunb                   | .  | .  | Bunbury's Reports, Exchequer, fol, 1 vol, 1712—1741                              |
| Burr                   | .. | .  | Burrow's Reports, King's Bench, 5 vols, 1756—1772                                |
| Burr S C               |    |    | Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776                       |
| Burrell                |    |    | Burrell's Reports, Admiralty, ed by Marsden, 1 vol, 1648—1840                    |
| C A.                   | .  | .. | Court of Appeal  |
| C B                    | .  |    | Common Bench Reports, 18 vols, 1845—1858   |
| C B (N s)              |    |    | Common Bench Reports, New Series, 20 vols, 1858—1865                             |
| C. C Ct. Cas           |    |    | Central Criminal Court Cases (Sessions Papers), 1834—(current)                   |
| C. L. R.               |    |    | Common Law Reports, 3 vols, 1853—1855  |
| C P D                  |    |    | Law Reports, Common Pleas Division, 5 vols, 1871—1880                            |
| C & P                  | .  | .  | Carrington and Payne's Reports, Nisi Prius, 9 vols 1823—1841                     |
| Cab & El               | .  | .  | Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885            |
| Cald Mag Cas.          | .  |    | Caldecott's Magistrates Cases, 1 vol, 1777—1786                                  |
| Calth                  | .  | .  | Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618                 |
| Camp                   | .  | .  | Campbell's Reports, Nisi Prius, 4 vols, 1807—1816                                |
| Carp Pat Cas           |    |    | Carpmael's Patent Cases, 2 vols, 1802—1842                                       |
| Car & Kir              |    |    | Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1815—1853                  |
| Car & M                | .  | .  | Carrington and Marshman's Reports, Nisi Prius, 1 vol, 1841—1843.                 |
| Cart                   | .  | .  | Carter's Reports, Common Pleas, fol, 1 vol., 1664—1673                           |
| Carth.                 | .. | .  | Canthow's Reports, King's Bench, fol., 1 vol, 1687—1700                          |
| Cary                   | .  | .  | Cary's Reports, Chancery, 1 vol  |
| Cas in Oh.             |    |    | Cases in Chancery, fol., 3 parts, 1660—1697                                      |
| Cas Pract. K. B        |    | .  | Cases of Practice, King's Bench, 1 vol., 1655—1775                               |
| Cas. Sett              | .. | .. | Cases of Settlements and Removals, 1 vol., 1689—1727                             |
| Cas temp. Finch        | .. | .. | Cases temp. Finch, Chancery, fol., 1 vol., 1673—1680                             |
| Cas. temp. King        | .. | .. | Select Cases temp. King, Chancery, fol, 1 vol., 1724—1733                        |
| Cas. temp. Talb.       | .. | .. | Cases in Equity temp. Talbot, fol., 1 vol., 1730—1737                            |
| Oh. (preceded by date) | .  | .  | Law Reports, Chancery Division, since 1890 (e.g. [1891] 1 Oh.)                   |
| Oh. App.               | .. | .. | Law Reports, Chancery Appeals, 10 vols., 1865—1876                               |
| Oh. D.                 | .. | .. | Law Reports, Chancery Division, 45 vols., 1876—1890                              |
| Oh. Rep.               | .. | .. | Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808                    |

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| Char. Pr Cas     | Charley's New Practice Reports, 3 vols, 1875—1876  |
| Char Cham Cas.   | Charley's Chamber Cases, 1 vol, 1875—1876  |
| Chit             | Chitty's Practice Reports, King's Bench, 2 vols, 1770—1822                                       |
| Cl & Fin         | Clark and Fennelly's Reports, House of Lords, 12 vols, 1831—1846                                 |
| Clay             | Clayton's Reports and Pleas of Assises at Yorke, 1 vol, 1631—1650                                |
| Clif & Rick      | Clifford and Rickards' Locus Standi Reports, 3 vols, 1873—1884                                   |
| Clif & Steph     | Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872                                  |
| Cockb & Rowe     | Cockburn and Rowe's Election Cases, 1 vol, 1833  |
| Co Ent           | Coke's Entries   |
| Co Inst          | Coke's Institutes  |
| Co Latt          | Coke on Littleton (1 Inst)   |
| Co Rep           | Coke's Reports, 13 parts, 1572—1616  |
| Coll             | Collyer's Reports, Chancery, 2 vols, 1814—1846   |
| Coll Jurid       | Collectanea Juridica, 2 vols   |
| Colles           | Colles' Cases in Parliament, 1 vol, 1697—1713  |
| Colt             | Coltman's Registration Cases, 1 vol, 1879—1885   |
| Com              | Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol, 2 vols, 1695—1740               |
| Com Cas          | Commercial Cases, 1895—(current)   |
| Com Dig          | Comyns' Digest   |
| Comb             | Comberbach's Reports, King's Bench, fol, 1 vol, 1685—1698  |
| Con & Law        | Connor and Lawson's Reports, Chancery (Ireland), 2 vols, 1841—1843                               |
| Cooke & Al       | Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol, 1833—1834                             |
| Cooke, Pr Cas    | Cooke's Practice Reports, Common Pleas, 1 vol, 1706—1747   |
| Cooke, Pr Reg    | Cooke's Practical Register of the Common Pleas, 1 vol, 1702—1742                                 |
| Coop G           | G Cooper's Reports, Chancery, 1 vol, 1792—1815   |
| Coop Pr Cas      | C P Cooper's Reports, Chancery Practice, 1 vol, 1837—1838  |
| Coop temp Brough | C P Cooper's Cases temp Brougham, Chancery, 1 vol, 1833—1834                                     |
| Coop temp Cott   | C P Cooper's Cases temp Cottenham, Chancery, 2 vols, 1816—1848 (and miscellaneous earlier cases) |
| Corb & D         | Corbett and Daniell's Election Cases, 1 vol, 1819  |
| Couper           | Couper's Justiciary Reports (Scotland), 5 vols, 1868—1885  |
| Cowp             | Cowper's Reports, King's Bench, 2 vols, 1774—1778  |
| Cox, C O         | E W Cox's Criminal Law Cases, 1843—(current)   |
| Cox & Atk        | Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846                                  |
| Cox, Eq Cas      | S C Cox's Equity Cases, 2 vols, 1745—1797  |
| Cox, M & H       | Cox, Macrae, and Hentale's County Courts Cases and Appeals, Vol I, 1846—1852                     |
| Cr & J.          | Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832                                     |
| Cr & M.          | Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834                                     |
| Cr M & R         | Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835                            |
| Cr & Ph.         | Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841   |
| Cr Ap Rep        | Cohen's Criminal Appeal Reports, 1909 (Current).   |
| Craw : D.        | Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846                                   |



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|--------------------|----|--|
| Craw. & D Abr C.   | .  | Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838                           |
| Cress Insolv. Cas  |    | Cresswell's Insolvency Cases, 1 vol., 1827—1829  |
| Cripps' Church Cas |    | Cripps' Church and Clergy Cases, 2 parts, 1847—1850                                      |
| Cro Car.           |    | Croke's Reports <i>temp</i> Charles I., King's Bench and Common Pleas, 1 vol., 1623—1641 |
| Cro. Eliz.         | .. | Croke's Reports <i>temp</i> Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603  |
| Cro Jac.           | .  | Croke's Reports <i>temp</i> James I., King's Bench and Common Pleas, 1 vol., 1603—1625   |
| Cru Dig            |    | Cruise's Digest of the Law of Real Property, 7 vols.                                     |
| Cunn               |    | Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735                              |
| Curt               |    | Curteis' Ecclesiastical Reports, 3 vols., 1834—1844                                      |
| Dalr.              |    | Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720              |
| Dan                | .. | Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823                                |
| Dan & Il           |    | Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829                                   |
| Dav. & Mei         | .  | Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844                         |
| Dav Pat Cas        | .  | Davies' Patent Cases, 1 vol., 1785—1816  |
| Dav Ir             |    | Davy's (or Davies' or Davy's) Reports (Ireland), 1 vol., 1604—1611                       |
| Day                |    | Day's Election Cases, 1 vol., 1892—1893  |
| Dea & Sw           |    | Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857                             |
| Deac               | .  | Deacon's Reports, Bankruptcy, 4 vols., 1834—1840   |
| Deac & Ch          | .  | Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835                              |
| Dears & B          | .. | Dearsly and Bell's Crown Cases Reserved, 1 vol., 1836—1838                               |
| Dears C C          |    | Dearsly's Crown Cases Reserved, 1 vol., 1852—1856  |
| Deas & And         | .  | Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832                             |
| De G               | .  | De Gex's Reports, Bankruptcy, 1 vol., 1844—1848  |
| De G F & J         |    | De Gex, Fishor, and Jones's Reports, Chancery, 4 vols., 1859—1862                        |
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| Marsh           | Marshall's Reports, Common Pleas, 2 vols, 1813—1816   |
| Mayn            | Maynard's Reports, Exchequer Memoranda of Edw I and Year Books of Edw II, Year Books, Part I, 1273—1326 |
| Meg             | Megone's Companies Acts Cases, 2 vols, 1889—1891  |
| Mer             | Merivale's Reports, Chancery, 3 vols, 1815—1817   |
| Milw            | Milward's Ecclesiastical Reports (Ireland), 1 vol, 1819—1843  |
| Mod Rep         | Modern Reports, 12 vols, 1669—1755  |
| Mol             | Molloy's Reports, Chancery (Ireland), 3 vols, 1808—1831   |
| Mont            | Montagu's Reports, Bankruptcy, 1 vol, 1829—1832   |
| Mont & A        | Montagu and Ayton's Reports, Bankruptcy, 3 vols, 1832—1838  |
| Mont & B        | Montagu and Bligh's Reports, Bankruptcy, 1 vol, 1832—1833   |
| Mont & Ch       | Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1810   |
| Mont D & De G   | Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols, 1840—1844                                    |
| Mont & M        | Montagu and Macarthur's Reports, Bankruptcy, 1 vol, 1826—1830   |
| Moo P C C       | Moore's Privy Council Cases, 15 vols, 1836—1863   |
| Moo P C C (N S) | Moore's Privy Council Cases, New Series, 9 vols, 1862—1873  |
| Moo Ind App     | Moore's Indian Appeal Cases, Privy Council, 14 vols, 1836—1872  |
| Moo & P         | Moore and Payne's Reports, Common Pleas, 5 vols, 1827—1831  |
| Moo & S         | Moore and Scott's Reports, Common Pleas, 4 vols, 1831—1834  |
| Mood & M        | Moody and Malkin's Reports, Nisi Prius, 1 vol, 1826—1830  |
| Mood & R        | Moody and Robinson's Reports, Nisi Prius, 2 vols, 1830—1844   |
| Mood C C        | Moody's Crown Cases Reserved, 2 vols, 1824—1844   |
| Moore (κ β)     | Sir F. Moore's Reports, King's Bench, fol, 1 vol., 1485—1620  |
| Moore (σ ρ)     | J B Moore's Reports, Common Pleas, 12 vols, 1817—1827   |
| Mer Dict ..     | Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols, 1532—1808                      |
| Morr .. ..      | Morrell's Reports, Bankruptcy, 10 vols, 1884—1893   |
| Mos ..          | Moseley's Reports, Chancery, fol, 1 vol, 1726—1730  |
| Murp. & H.      | Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1857   |
| Murr ..         | Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830   |
| My & Or ..      | Mylne and Craig's Reports, Chancery, 5 vols., 1833—1841   |
| My. & K. ..     | Mylne and Keen's Reports, Chancery, 3 vols., 1832—1836  |



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| Nels                 | .     | Nelson's Reports, Chancery, 1 vol., 1625—1692                                       |
| Nev & M (K B)        | .     | Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836                      |
| Nev & M (M C.)       | .     | Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836                         |
| Nev. & P (K B)       | .     | Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838                        |
| Nev. & P (M C.)      | .     | Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837                            |
| New Mag Cas          | .     | New Magistrates' Cases (Bittleston, Wise and Parnell), 2 vols., 1844—1848           |
| New Pract Cas        | .     | New Practice Cases (Bittleston and Wise), 3 vols., 1844—1848                        |
| New Rep              | .     | New Reports, 6 vols., 1862—1865   |
| New Sess Cas         | .     | New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851 |
| Nolan                | .     | Nolan's Magistrates' Cases, 1 vol., 1791—1793                                       |
| Notes of Cases       | .     | Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850        |
| Noy                  | .     | Noy's Reports, King's Bench, fol., 1 vol., 1555—1649                                |
| O Bridg.             | .     | Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666                     |
| O'M & H              | .     | O'Malley and Harcastle's Election Cases, 1869—(current)                             |
| Owen                 | .     | Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614              |
| P (preceded by date) | .     | Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (e.g., [1891] P)  |
| P D                  | .     | Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890          |
| P Wms                | .     | Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1690—1735              |
| Palm.                | .     | Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629                             |
| Park                 | ..    | Parker's Reports, Exchequer, fol., 1 vol., 1743—1766                                |
| Pat App              | .     | Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822                          |
| Pater App            | .     | Paterson's Scotch Appeals, House of Lords, 2 vols., 1831—1873                       |
| Peake                | .     | Peake's Reports, Nisi Prius, 1 vol., 1790—1794                                      |
| Peake, Add Cas       | .     | Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812                             |
| Peck                 | .     | Peckwell's Election Cases, 2 vols., 1803—1804                                       |
| Per & Dav.           | .     | Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841                      |
| Per & Kn             | .     | Perry and Knapp's Election Cases, 1 vol., 1833                                      |
| Ph                   | .     | Philips' Reports, Chancery, 2 vols., 1841—1849                                      |
| Phil El. Cas         | .     | Philips' Election Cases, 1 vol., 1780   |
| Philim.              | .     | J Philimore's Ecclesiastical Reports, 3 vols., 1754—1821                            |
| Philim Eccl Jud.     | .     | Sir R Philimore's Ecclesiastical Judgments, 1 vol., 1867—1875                       |
| Pig & R.             | .     | Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845                          |
| Pitc.                | .. .. | Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624                           |
| Plowd.               | .. .. | Plowden's Reports, fol., 2 vols., 1550—1579   |
| Polk.                | .. .. | Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682                          |
| Poph                 | .. .. | Popham's Reports, King's Bench, fol., 1 vol., 1691—1627                             |

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| Pow. E & D. ..          | Power, Rodwell, and Dew's Election Cases, 2 vols, 1848—1856                             |
| Proc Ch.                | Precedents in Chancery, fol, 1 vol, 1689—1722   |
| Price ..                | Price's Reports, Exchequer, 13 vols, 1814—1824  |
| Q. B. . .               | Queen's Bench Reports (Adolphus and Eltes, New Series), 18 vols, 1841—1852              |
| Q B (preceded by date)  | Law Reports, Queen's Bench Division, 1891—1901 (e.g., [1891] 1 Q B)                     |
| Q. B D. .               | Law Reports, Queen's Bench Division, 25 vols, 1875—1890                                 |
| R                       | The Reports, 15 vols, 1893—1895   |
| R. (Ct of Sess.)        | Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898              |
| R P C                   | Reports of Patent Cases, 1884—(current)   |
| R R                     | Revised Reports   |
| R S. C.                 | Rules of the Supreme Court  |
| Rast                    | Rastell's Entries   |
| Rayn                    | Rayner's Tithe Cases, 3 vols, 1575—1782   |
| Real Prop Cas           | Real Property Cases, 2 vols, 1843—1847  |
| Rep. Ch                 | Reports in Chancery, fol, 3 vols, 1615—1710   |
| Rick & M                | Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889                          |
| Rick & S                | Rickards and Saunders' Locus Standi Reports, 1 vol, 1890—1894                           |
| Ridg temp H             | Ridgeway's Reports, temp Hardwicke, 1 vol, King's Bench, 1733—1736, Chancery, 1744—1746 |
| Ridg L & S              | Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol, 1793—1795                       |
| Ridg Parl Rep           | Ridgeway's Parliamentary Reports (Ireland), 3 vols, 1784—1796                           |
| Rob Eccl                | Robertson's Ecclesiastical Reports, 2 vols, 1844—1853                                   |
| Rob L. & W              | Roberts, Leeming, and Wallis' New County Court Cases, 1 vol, 1849—1851                  |
| Robert App              | Robertson's Scotch Appeals, House of Lords, 1 vol, 1709—1727                            |
| Robin App               | Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841                           |
| Roll Abr                | Rolle's Abridgment of the Common Law, fol, 2 vols.                                      |
| Roll Rep                | Rolle's Reports, King's Bench, fol, 2 vols, 1614—1626                                   |
| Rom                     | Ronilly's Notes of Cases in Equity, 1 part, 1772—1787                                   |
| Rose                    | Rose's Reports, Bankruptcy, 2 vols, 1810—1816   |
| Ross, L. C.             | Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.                  |
| Rowe                    | Rowe's Reports (England and Ireland), 1 vol, 1798—1823                                  |
| Rul Cas.                | Campbell's Ruling Cases, 25 vols.   |
| Russ ..                 | Russell's Reports, Chancery, 5 vols, 1824—1829  |
| Russ & M ..             | Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833                               |
| Russ. & Ry .            | Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823                              |
| Ry & Can. Cas           | Railway and Canal Cases, 7 vols, 1835—1854  |
| Ry & Can, Tr Cas        | Railway and Canal Traffic Cases, 1855—(current)   |
| Ry & M.                 | Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826                                 |
| S C                     | Same Case   |
| S. C (preceded by date) | Court of Session Cases (Scotland), since 1906 (e.g., [1906] S C)                        |
| S-G.                    | Solitor-General   |
| Salk ..                 | Salkeld's Reports, King's Bench, 3 vols., 1689—1712                                     |

# ABBREVIATIONS.

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|------------------|----|----|--|
| Sau. & Sc.       | .. | .. | Saunders and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840  |
| Saund.           | .. | .. | Saunders's Reports, King's Bench, 2 vols., 1666—1672   |
| Saund. & A.      | .. | .. | Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904   |
| Saund. & B.      | .. | .. | Saunders and Bidder's Locus Standi Reports, 1905—(current)   |
| Saund & C.       | .. | .. | Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848  |
| Saund & M.       | .. | .. | Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858 |
| Sav.             | .. | .. | Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591  |
| Say.             | .. | .. | Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756   |
| Sc Jur.          | .  | .. | Scottish Jurist, 46 vols., 1829—1873   |
| Sc L R.          | .  | .. | Scottish Law Reporter, 1865—(current)  |
| Sch. & Lef       | .. | .. | Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806  |
| Sc R R.          | .. | .  | Scots Revised Reports  |
| Scott            | .. | .. | Scott's Reports, Common Pleas, 8 vols., 1834—1840  |
| Scott (N R)      | .. | .. | Scott's New Reports, Common Pleas, 8 vols., 1840—1845  |
| See & Sm.        | .  | .  | Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860   |
| Sel Cas Ch.      | .  | .  | Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt III of Cas in Ch)  |
| Sess. Cas (K B)  | .  | .  | Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747  |
| Sh & Macd        | .  | .  | Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838  |
| Sh (Ot of Sess)  | .  | .  | Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838   |
| Sh Dig.          | .. | .  | P Shaw's Digest of Decisions (Scotland), ed by Bell and Lamond, 3 vols., 1726—1868   |
| Sk. Just.        | .  | .  | P Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831  |
| Sh Sc App.       | .  | .  | P Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824  |
| Sh Teind Ct      | .  | .  | P Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831   |
| Shep Touch.      | .  | .  | Sheppard's Touchstone of Common Assurances   |
| Show             | .  | .  | Shower's Reports, King's Bench, 2 vols., 1678—1695   |
| Show. Parl Cas.  | .  | .  | Shower's Cases in Parliament, fol., 1 vol., 1694—1699  |
| Sid.             | .  | .  | Siderfin's Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1657—1670  |
| Sim              | .  | .  | Simons' Reports, Chancery, 17 vols., 1826—1852   |
| Sim (N S)        | .  | .  | Simons' Reports, Chancery, New Series, 2 vols., 1850—1852  |
| Sim. & St.       | .. | .  | Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826  |
| Skinn.           | .. | .. | Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697   |
| Sm & Bat.        | .. | .. | Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825   |
| Sm. & G.         | .. | .. | Smale and Giffard's Reports, Chancery, 3 vols., 1852—1858  |
| Smith, K. B.     | .  | .. | J P. Smith's Reports, King's Bench, 3 vols., 1803—1806   |
| Smith, L. C.     | .  | .  | Smith's Leading Cases, 2 vols.   |
| Smith, Reg. Cas. | .  | .  | C L. Smith's Registration Cases, 1895—(current)  |
| Smythe           | .. | .. | Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840  |

|                        |   |
|------------------------|---|
| Sol Jo                 | Solitors' Journal, 1856—(current)   |
| Spinks                 | Spinks' Prize Court Cases, 2 parts, 1854—1856   |
| Stair Rep              | Stair's Decisions, Court of Session (Scotland), fol , 2 vols , 1661—1681                |
| Stark                  | Starkie's Reports, Nisi Prius, 3 vols , 1814—1823                                       |
| State Tr               | State Trials, 34 vols , 1163—1820   |
| State Tr (N 9)         | State Trials, New Series, 8 vols , 1820—1858  |
| Stra                   | Strange's Reports, 2 vols , 1716—1747   |
| Stu M & P              | Stuart, Milne, and Peddie's Reports (Scotland), 2 vols , 1851—1853                      |
| Sty                    | Style's Reports, King's Bench, fol , 1 vol , 1646—1655                                  |
| Sw                     | Swabey's Reports, Admiralty, 1 vol , 1855—1859  |
| Sw & Tr                | Swabey and Tristram's Reports, Probate and Divorce, 4 vols , 1858—1865                  |
| Swan                   | Swanston's Reports, Chancery, 3 vols , 1818—1821  |
| Swin                   | Swinton's Justiciary Reports (Scotland), 2 vols , 1835—1841                             |
| Syme                   | Syme's Justiciary Reports (Scotland), 1 vol , 1826—1829                                 |
| T & M                  | Temple and Mew's Criminal Appeal Cases, 1 vol , 1848—1851                               |
| T Jo                   | Sir T Jones's Reports, King's Bench and Common Pleas, fol , 1 vol , 1669—1684           |
| T J, R                 | The Times Law Reports, 1884—(current)   |
| T Raym                 | Sir T Raymond's Reports, King's Bench, fol , 1 vol , 1660—1683                          |
| Taml                   | Tamlyn's Reports, Rolls Court, 1 vol , 1829—1830  |
| Taunt                  | Taunton's Reports, Common Pleas, 8 vols , 1807—1819                                     |
| Tax Cas                | Tax Cases, 1875—(current)   |
| Term Rep               | Term Reports (Durnford and East), fol , 8 vols , 1785—1800                              |
| Toth                   | Tothill's Transactions in Chancery 1 vol , 1559—1646                                    |
| Trust                  | Tristram's Consistory Judgments, 1 vol , 1873—1892                                      |
| Tudor, L. C. Merc Law  | Tudor's Leading Cases on Mercantile and Maritime Law                                    |
| Tudor, L. C. Real Prop | Tudor's Leading Cases on Real Property  |
| Turn & R               | Turner and Russell's Reports, Chancery, 1 vol , 1822—1825                               |
| Tyr                    | Tyrwhitt's Reports, Exchequer, 5 vols , 1830—1836                                       |
| Tyr & Gr               | Tyrwhitt and Granger's Reports, Exchequer, 1 vol 1835—1836                              |
| Vaugh                  | Vaughan's Reports, Common Pleas, fol , 1 vol 1666—1673                                  |
| Vent.                  | Ventris' Reports (Vol I, King's Bench, Vol II., Common Pleas), fol , 2 vols , 1668—1691 |
| Vern                   | Vernon's Reports, Chancery, 2 vols , 1680—1719  |
| Vern & Scr.            | Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol , 1786—1788                 |
| Ves.                   | Vesey Jun 's Reports, Chancery, 19 vols , 1789—1817                                     |
| Ves. & B.              | Vesey and Beames's Reports, Chancery, 3 vols , 1812—1814                                |
| Ves Sen                | Vesey Sen 's Reports, 2 vols., 1747—1756  |
| Vin Abr                | Viner's Abridgment of Law and Equity, fol., 22 vols.                                    |
| Vin Supp               | Supplement to Viner's Abridgment of Law and Equity, 6 vols.                             |
| W Jo.                  | Sir W Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640           |
| W N (preceded by date) | Law Reports, Weekly Notes, 1866—(current) (e.g. [1866] W N)                             |

|                 |  |
|-----------------|--|
| W R.            | Weekly Reporter, 54 vols 1852—1906   |
| Wallis .        | Wallis's Reports, Chancery (Ireland), 1 vol , 1766—1791                                    |
| Web. Pat Cas.   | Webster's Patent Cases, 2 vols , 1602—1855   |
| Welsh, Reg Cas  | Welsh's Registry Cases (Ireland), 1 vol , 1832—1840  |
| Went Off Ex.    | Wentworth's Office and Duty of Executors   |
| West            | West's Reports, House of Lords, 1 vol , 1839—1841  |
| West temp Hard  | West's Reports temp Hardwicke, Chancery, 1 vol , 1736—1740                                 |
| West Tithe Cas  | Western's London Tithe Cases, 1 vol , 1592—1822  |
| White           | White's Justiciary Reports (Scotland), 3 vols., 1886—1893                                  |
| White & Tud L O | White and Tudor's Leading Cases in Equity, 2 vols.   |
| Wight           | Wightwick's Reports, Exchequer, 1 vol , 1810—1811  |
| Will Woll & Dav | Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol , 1837     |
| Will Woll & H   | Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols , 1838—1839 |
| Willes          | Willes' Reports, Common Pleas, 1 vol , 1737—1758   |
| Wilm            | Wilmot's Notes of Opinions and Judgments, 1 vol , 1757—1770                                |
| Wils            | G Wilson's Reports, King's Bench and Common Pleas, fol , 3 vols , 1742—1774                |
| Wils & S        | Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols , 1825—1835                       |
| Wils (CH)       | J Wilson's Reports, Chancery, 2 vols , 1818—1819   |
| Wils (EX)       | J Wilson's Reports, Exchequer in Equity, 1 part, 1817                                      |
| Win             | Winch's Reports, Common Pleas, fol , 1 vol , 1621—1625                                     |
| Wm Bl           | William Blackstone's Reports, King's Bench and Common Pleas, fol , 2 vols , 1746—1779      |
| Wm Rob          | William Robinson's Reports, Admiralty, 3 vols , 1838—1850                                  |
| Wms Saund       | Williams' Notes to Saunders' Reports, 2 vols   |
| Wolf & B        | Wolferstan and Bristowe's Election Cases, 1 vol , 1869—1864                                |
| Wolf & D        | Wolferstan and Dew's Election Cases, 1 vol , 1857—1858                                     |
| Woll            | Wollaston's Reports, Bail Court and Practice, 1 vol , 1840—1841                            |
| Wood            | Wood's Tithe Cases, Exchequer, 4 vols , 1650—1798  |
| Y & O Ch Cas    | Younge and Collyer's Reports, Chancery Cases, 2 vols , 1841—1843                           |
| Y & O (EX)      | Younge and Collyer's Reports, Exchequer in Equity, 4 vols , 1834—1842                      |
| Y & J . .       | Younge and Jervis' Reports, Exchequer, 3 vols , 1826—1830                                  |
| Y. B. . .       | Year Books   |
| Yelv.           | Yelverton's Reports, King's Bench, fol , 1 vol , 1602—1613                                 |
| You. . . .      | Younge's Reports, Exchequer in Equity, 1 vol , 1830—1832                                   |



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| 13 Edw 1, c. 18          | (Statute of Westminster II, 1285) . . .   | 118                               |
| c. 34                    | (Statute of Westminster II, 1285) . . .   | 618, 619                          |
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| 23 Edw 1                 | (Statute de Frangentibus Prisonam) . . .  | 507                               |
| 25 Edw 1                 | (Carta de Libertatibus de Forestæ) . . .  | 111                               |
| c. 14                    | (Magna Carta) . . .   | 412                               |
| 28 Edw 1, c. 11          | (Punishment of Champerty, 1300) . . .   | 500                               |
| 33 Edw 1                 | (Definition of Conspirators and Champerty, 1305) . . .                                  | 500                               |
| c. 4                     | (Ordinatio de Conspiratoribus) . . .  | 500                               |
| 34 Edw 1, cc. 1, 2, 4    | (Ordinatio de Foresta) . . .  | 111, 113, 114                     |
| 17 Edw 2, stat. 2, c. 9  | (De Prærogativa Regis) . . .  | 94                                |
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| 23 Edw 3, c. 11          | (Punishment of Champerty, 1354) . . .   | 300                               |
| 1 Ric 2, c. 4            | (Prohibition of Penalties for Maintenance, 1377) . . .                                  | 500                               |
| 3 Ric 2, stat. 1, c. 7   | (Unlawful Entry on Lands with Force, 1381) . . .  | 474, 476                          |
| 7 Ric 2, c. 15           | (Confirmation of Statutes against Maintenance and Champerty, 1383) . . .                | 500                               |
| cc. 3, 4                 | (Verdict in same place as Charge, 1383) . . .   | 111                               |
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| c. 3                     | (Admiral's Jurisdiction, 1391) . . .  | 90, 105, 274                      |
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| 17 Ric 2, c. 4           | (Riots and Tumults (Suppression), 1394) . . .   | 474                               |
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**ECCELSIASTICAL LAW**

## Part I.—Introductory.

### SECT 1—*The Nature of Courts.*

#### SUB SECT 1—*Definition*

Meaning of  
 "court."

1 The term "court" (a) has (*inter alia*) the original meaning of the King's Palace, and has acquired the meaning of the place where justice is administered, and thence again the meaning of the persons who exercise judicial functions under authority derived either immediately or mediately from the King. All tribunals, however, are not courts, in the sense in which the term is here

(a) "Court (Curia) signifies the King's palace, or mansion, and is more especially the place where justice is judicially administered" (Jacob, Law Dictionary, *sub voce* Court) "Court est diversement prise, ascun fois p le meason ou le Roy est present ove son ordinary attendants, et auxy le lieu ou justice est judicialment ministré" "Court is diversely taken, sometimes for the house where the King remains with his ordinary retinue, and also the place where justice is judicially ministered" (Tormes de la Ley, *sub voce* Court) "Court, Latin cohort-em, cortom at an early date the French word appears to have been associated with Latin curia, and hence apparently the series of senses under branches III. and IV., in which curia is the regular medieval Latin equivalent . . . III. an assembly held by the sovereign . . . IV. a court of judicature, of law, or of administration 10 Applied to Parliament 11. An assembly of judges or other persons legally appointed and acting as a tribunal to hear and determine any cause, civil, ecclesiastical, military, or naval" (New English Dictionary, Vol. II., pp 1090, 1091).

employed, namely, to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to such jurisdiction. Thus, arbitrators, committees of clubs, and the like, although they may be tribunals exercising judicial functions, are not "courts" in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a court. Its duties as a whole are deliberative and legislative, the judicial duties are only partial. A court of investigation, like the coroner's court, is a court. The distinction appears to be not so much whether the particular tribunal is a court of justice, but whether it is a court in law (b). Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as assessment committees, boards of guardians, the benchers of the Inns of Court when considering the conduct of one of their members, or the General Medical Council when considering questions affecting the position of a medical man (c). A meeting of a county council for granting music and dancing licences is not a court (d), nor are justices at a licensing meeting sitting as a court of summary jurisdiction (e).

SECT. 1.  
The Nature  
of Courts.

As a general principle, all courts must be open to the public, though the judge may for good and sufficient reason order that the public, or a certain section of the public, shall be temporarily excluded (f).

Admission of  
the public.

#### SUB-SECT. 2.—Classification

2 Courts may be classified in several ways. First, they may be divided into such as are courts of the King and such as are not. The latter class includes the palatine courts (g), where the King has parted with the *jura regalia* in the county palatine, courts baron (h) and the old sheriffs' county courts (i), all other courts are the King's courts.

The King's  
courts

3 Another manner of division is into courts of record and courts not of record. Whether a court is a court of record or not depends on whether it has power to fine (j) and imprison (k),

Courts of  
record

(b) See judgment of Fry, J., in *Royal Aquarium and Summer and Winter Garden Society v Parkinson*, [1892] 1 Q. B. 431, C. A., at pp. 446, 447. For Parliament, see that title, for coroner's court, see title CORONERS, Vol. VIII, p. 236.

(c) *Ibid.*, at p. 447. The College of Physicians, however, in dealing with cases of *mala praxis* is a court of record (14 & 15 Hen. 8, c. 5 (1523)).

(d) *Royal Aquarium and Summer and Winter Garden Society v Parkinson*, *supra*.

(e) *Boulter v Kent Justices*, [1897] A. C. 556.

(f) *E.g.*, under the Children Act, 1908 (8 Edw. 7, c. 67), s. 114. A court has inherent jurisdiction to order any case to be heard *in camera* (*D v D*, [1903] P. 144, see also *Andrew v Raeburn* (1874), 9 Ch. App. 522, *Mellor v Thompson* (1886), 31 Ch. D. 55, *Badische Anilin und Soda Fabrik v Levinstein* (1882), 21 Ch. D. 156, *Re Martindale*, [1894] 3 Ch. 193, *per* NORTH, J., at p. 200).

(g) See p. 120, *post*.

(h) See p. 216, *post*.

(i) See note (t), p. 118, *post*.

(j) "La est un difference porenter Amerciaments and Fines. For Fines sont Punishments certain, que creeront expresment et ascun statute & Amerciaments sont tiels que sont arbitrairement imposez p les Affeerors." "There is a difference between Amerciaments and Fines. For Fines are Punishments certain, which grow expressly from some statutes, and Amerciaments are such which are arbitrarily imposed by the Affeerors" (*Termes de la Ley, sub voce* Amercement).

(k) That is, to imprison by way of punishment and not merely for safe custody.

**SECT 1**  
**The Nature**  
**of Courts.**

Courts not of  
 record.

whether for contempt of itself or for other substantive offences (*l*) Courts of record are such as have been expressly made so by statute (*m*), or by implication of a statute, that is by having statutory power to fine and imprison, and courts of record at common law. These latter are such civil courts as have power to hear and determine, according to the course of the common law, actions in which the debt, damages or value of the property claimed is forty shillings or above, and such criminal courts as have power to fine or imprison. Courts not of record are those civil courts in which the proceedings are not according to the course of common law (except such as have been made courts of record by statute). All courts of record, with the exception of the courts of the counties palatine, are courts of the King, even though a subject or corporation has the benefit of the court, as in the case of borough and city courts of record (*n*). The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein (*o*).

(*l*) See *Groenvelt v Burwell* (1699), 1 Ld Raym 454

(*m*) The following courts have been made courts of record by statute. The High Court of Justice, by the Judicature Act, 1873 (36 & 37 Vict c 66), s 16, the Court of Appeal, *ibid*, s 18, the Court of Criminal Appeal, by the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 1 (7), the Court of Record for the Hundred of Salford, by the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict c cxxx), s 4, the County Courts, by the County Courts Act, 1888 (51 & 52 Vict c 43), s 5

(*n*) Another distinction which has been drawn between courts of record and courts not of record is that in the former case a writ of error lay, and in the latter the proceeding was by way of writ of false judgment. Proceedings in error have been expressly abolished, in the case of criminal proceedings by the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (1), and in the case of civil proceedings in the High Court of Justice by R. S. O., 1875, Ord 58, r 1. (This rule is now repealed, but the abolition of proceedings in error remains in force). This rule was not expressly made to apply to inferior courts of record, but the effect of *Le Blanch v Reuter's Telegraph Co* (1876), 1 Ex D 408, C A, is that the procedure by error is superseded by an appeal to a divisional court of the King's Bench Division. As, however, such appeals are limited to cases in which error would have lain, the distinction, if accurate, may still have practical importance. It may be observed that although the writ of false judgment has never been abolished by statute, it has become obsolete, as has also the writ of *recordari facias loquelam*.

The distinction, however, only appears to be accurate in the case of civil courts, for in the case of courts having criminal jurisdiction the criterion appears to be that courts having power to fine and imprison are courts of record, although the proceedings be not according to common law, and consequently the proceedings could not be challenged by writ of error, but only by *certiorari*, see *Groenvelt v Burwell* (1699), 1 Ld Raym 454. "Where there is a jurisdiction erected *de novo* with power to fine and imprison, it is a court of record for courts of record only can fine" (*ibid*, p 467). "He [HOLT, C J] compared it to convictions before justices of the peace out of sessions, upon which, though error does not lie, yet a *certiorari* lies" (*ibid*, p 469). In this case the court in question was that of the censors of the College of Physicians, who had, under the statute 1 Mar sess 2, c 9 (1553), power to fine and imprison; but see *Miller v Seare* (1776), 2 Wm Bl 1141, *Payne v Wright* (1892), 61 L J (M C) 114, C A.

(*o*) "Record est un Escrypt en Parchment, ou sont enroll Pleas de Terre, ou Common Pleas, Faits, ou Criminal Proceedings en aucun Court de Record; mes en Courts nient de Record come Admiralite, Courts Christian, Courts Baron &c. leur Registre de Procedure ne sont proprement dits Records. Mes Courts de Lay teign p Grant al Roy sont Courts de Record." "Record is a Writing or Parchment, wherein are enrolled Pleas of Land or Common Pleas,



4 A third manner of division is into superior and inferior courts. The Superior Courts are the House of Lords, the Judicial Committee of the Privy Council, the Supreme Court of Judicature, the Court of Criminal Appeal, and the Courts of Chancery of the Counties Palatine of Lancaster and Durham, and are all courts of record. All other courts are inferior courts, whether they are courts of record or not.

SECT. 1.  
The Nature  
of Courts.

Superior and  
inferior  
courts.

5 The origin of the inferior courts, of which there are many varieties, may be traced back to the principle that justice should be taken to every man's door by constituting as many courts as there were manors in the Kingdom. They were primarily the court baron (*p*), which was incident to every manor, the hundred court (*q*), which was only a larger and more extended court baron, and the common law county courts, now practically extinct. To these were added numerous borough and other local courts (*r*), a variety of courts held by special officers for special purposes (*s*), and the modern county courts (*t*). They derived their general title of inferior courts because they were and are, in the great majority of cases, subject to the control and supervision of the Court of King's Bench or King's Bench Division as a superior court. A part of the original inherent jurisdiction of the Court of King's Bench was to examine and correct all errors committed by the inferior courts, whether in matter of law or in exceeding the jurisdiction that had been conferred upon them (*a*).

Origin of  
inferior  
courts.

6 The jurisdiction of an inferior court is defined by its constitution, which is either by charter from the King, Act of Parliament, or prescription, as amended or extended by any subsequent grant or legislation, or by order in council made under the provisions of the Judicature Acts, 1873 and 1884 (*b*). Such jurisdiction is generally limited to matters between residents in a certain locality, or to causes of action arising within prescribed metes and bounds, or to actions where the amount claimed is under a certain specified limit.

Jurisdiction  
of inferior  
courts.

7 It is in connection with jurisdiction that we find the chief distinctions between superior and inferior courts. The jurisdiction of the superior courts extends in civil cases over the whole of England and Wales and the town of Berwick-on-Tweed, and over the foreshore to low-water mark (*c*), though in certain circumstances the jurisdiction may be more extensive, and the courts may take cognisance of personal actions in respect of contracts or torts though the cause of

Distinctions  
between  
superior and  
inferior  
courts.

Deeds, or Criminal Proceedings in any Court of Record. But in Courts not of Record as Admiralty, Courts Christian, Courts Baron &c., their Registry of Proceedings are not properly called Records. But Courts of Law held by the King, as Grant are Courts of Record" (*Termes de la Ley, sub voce Record*), see also *JACOBS, Law Dictionary, sub voce Record*. Records are no longer kept on parchment

(*p*) See p. 218, *post*, and title *COPYHOLDS*, Vol. VIII., p. 10.

(*q*) See p. 214, *post*.

(*r*) See p. 129, *post*.

(*s*) *E.g.*, the Sheriffs' Courts (see p. 118, *post*), the Courts of the Commissioners of Sewers (see p. 220, *post*), and the various Ecclesiastical Courts, for which see title *ECCLIASTICAL LAW*.

(*t*) See title *COUNTY COURTS*, Vol. VIII., p. 410.

(*a*) 4 *Ob. Inst.* 71. As to jurisdiction, see p. 13, *post*.

(*b*) 36 & 37 *Vict. c. 66*, ss. 88—91, 47 & 48 *Vict. c. 61*, s. 18, and see p. 31, *post*.

(*c*) 1 *Chitty's Archbold's Practice*, 14th ed., p. 4.

**SECT. 1.**  
**The Nature**  
**of Courts**

action may have arisen abroad or the parties be foreigners(*d*) An agreement which purports to altogether oust the jurisdiction of the courts is void, though parties may agree to postpone the enforcement of a claim by action in the courts until their differences have been settled in some other way(*e*)

**Jurisdiction**

*Prima facie*, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court(*f*) An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary(*g*) The King's Bench, for example, is a court of universal jurisdiction and superintendency in certain classes of actions, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular action In an inferior court, other than a county court, unless the proceedings show on their face that the cause of action arose within its jurisdiction, the action cannot be maintained(*h*), and even in inferior courts with a local limit of jurisdiction it must appear that such limit is not being exceeded(*i*)

**Judgments**

Another distinction is that while the judgment of a superior court unreversed is conclusive(*j*) as to all relevant matters thereby decided, the judgment of an inferior court involving a question of jurisdiction is not final(*k*), and another is that a plaintiff is liable to an action for executing the process of an inferior court in a matter beyond its jurisdiction, and cannot justify under such process, whether he knows of the defect or not, and that the judge and officers of such a court are liable to an action if they knew of the defect of jurisdiction(*l*)

**Liability for**  
**executing**  
**jurisdiction**

(*d*) See title CONFLICT OF LAWS, Vol VI, p 177, and as to service out of the jurisdiction, see p 57, *post*, and title PRACTICE AND PROCEDURE For the criminal jurisdiction, see p 55, *post*

(*e*) *Scott v Avery* (1856), 5 H L Cas 811, *Horton v Sayer* (1859), 4 H. & N 643, 649, *Scott v Liverpool Corporation* (1858), 3 Do G & J 331, *Braunstein v Accidental Death Insurance Co* (1861), 1 B & S 782, and see titles ACTION, Vol I, p 22, ARBITRATION, Vol I, p 445, and other cases there cited

(*f*) *Praeger v Bell* (1667), 1 Wms Saund 73, *Spurrier v La Cloche*, [1902] A C 446

(*g*) *Mostyn v Fabrigas* (1770), Cowp 172, 1 Smith, L C, 11th ed, 604, *Derby (Earl) v Athol (Duke)* (1749), 1 Ves Sen 202, *Arcot (Nabob) v East India Co* (1791), 3 Bro C C 291, *London Corporation v Cox* (1867), L R 2 H L 239, *per WILLES J*, at p 260, *R v Johnson* (1805) 6 East, 583, and see title PLEADING

(*h*) *R ad v Pope* (1834), 1 Cr M & R 302, *Kemp v Clark* (1847), 12 Q B 647; *Cook v McPherson* (1845), 8 Q B 1030, *Waddock v Cooper* (1764), 2 Wils 16; *Treavor v Wall* (1786), 1 Term Rep 161 As to the jurisdiction of county courts, see that title, Vol VIII, p 428

(*i*) *Doulsen v Matthews* (1792), 4 Term Rep 503

(*j*) See title JUDGMENTS AND ORDERS

(*k*) *Per WILLES J*, in *London Corporation v Cox* (1867), L R 2 H L 239, at p 262.

(*l*) *Moravia v Neper* (1737), Wilses, 30; *Carratt v Morley* (1841), 1 Q B 18, *Andrews v Marrs* (1841), 1 Q B 8, *Houlden v Smith* (1850), 14 Q B 841; *per WILLES J* in *London Corporation v Cox*, *supra*, at p 263, see, as to county courts, that title, Vol VIII, p 426.

- \* The jurisdiction of an inferior court is not lost by mere non-user (*m*).

SECT. 1.  
The Nature  
of Courts.

Remedy for  
excess of  
jurisdiction.

8 If a court exceeds its jurisdiction the aggrieved party, or even a stranger, may apply to the King's Bench Division to exercise its ancient right of either prohibiting the judge of the inferior court from proceeding further in the matter, or, if judgment has been given, of bringing up the record by *certiorari* in order that it may be quashed (*n*)

9. At common law proceedings in error lay from any inferior court of record of civil jurisdiction to the King's Bench or Common Pleas, and now in all cases where the procedure by way of appeal from such a court is not regulated by some special statute an appeal can be brought to the King's Bench Division by notice of motion (*o*)

Appeal.

## SECT 2—The Jurisdiction of Courts

### SUB SECT 1—In General

10 By jurisdiction (*p*) is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted (*q*), and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited, a limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance (*r*), or as to the area over which the jurisdiction shall extend (*s*), or may partake of both these characteristics (*t*)

Meaning of  
jurisdiction

11 Where by reason of any such limitation a court is without jurisdiction to entertain any particular action or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court (*t*), nor can consent give a court jurisdiction

Consent and  
waiver.

(*m*) *A-G of Isle of Man v Cowley* (1859), 12 Moo P C 27, *R v. Havering-atte-Bower* (1822), 5 B & Ald 691. But as to loss of franchise of frankpledge, see p 215, *post*, and title COPYHOLDS, Vol. VII, pp 11, 12.

(*n*) For these proceedings, see title CROWN PRACTICE.

(*o*) *Darlow v Shuttleworth*, [1902] 1 K. B. 721, see *h* 8 *Ord* 59, rr 10—17.

(*p*) "Jurisdiction est un dignity q un home ad per un pignity which a man hath by a power to do Justice in causes of complaint made before him" (Termes de la Ley *sub voce* Jurisdiction). "There are three sorts of Jurisdictions, the first whereof is Tenere Placita which is the lowest, and the second is Conuissance there or in the King's Courts (i.e., the High Court), the third is the Jurisdiction of Pleas, and by this a right is vested in the Lord of the Franchise to hold Pleas, and he is the only person who can take advantage of it, by electing to hold Pleas, the third sort is an Exempt Jurisdiction, as where the King grants to some City that the inhabitants shall be sued within their City and not elsewhere. Though there is no Jurisdiction that can withstand a Certiorari, the Superior Courts *Crosse v Smith* (1703), 3 Salk. 79, 80" (Jacob's Law Dictionary, *sub voce* Jurisdiction).

(*q*) See p 17, *post*, for the creation of courts.

(*r*) See p 14, *post*.

(*s*) See p 18, *post*.

(*t*) *Green v Rutherford* (1750), 1 Ves Sen 462, 471, *Ann v Baltimore* (1750), 1 Ves Sen 444, 446; *James v Owen* (1848), 5 D. & L. 869, *Lawrence v Wullock* (1840), 11 Ad & El 941, *Wellesley (Lord) v W*

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if a condition which goes to the jurisdiction has not been performed or fulfilled (a) But where the court has jurisdiction over the particular subject-matter of the action or the particular parties, and the only objection is whether, under the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case, or a defendant by appearing without protest or by taking any steps in the action may waive his right to object to the court taking cognisance of the proceedings (b) No appearance or answer, however, can give a jurisdiction to a limited court (c), nor can such a court give itself jurisdiction by finding facts (d) Where a limited court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing (e), jurisdiction must be acquired before the judgment is given (f)

**Prohibition**

12 All lawful jurisdiction is derived from and must be traced to the royal authority (g) Any exercise of unauthorised jurisdiction is a usurpation of the royal prerogative, which is unwarranted by law and may be restrained by prohibition, which is, in short, a process for preventing inferior courts from intermeddling with or executing anything beyond their jurisdiction (g) In a prohibition for want of jurisdiction the only question is whether the court below has or has not jurisdiction, and immediately the superior court is satisfied that the inferior court has exceeded its jurisdiction, the writ must issue, whether the application be made by a party or by a stranger, and that no matter what stage the proceedings below have reached (h)

**SUB-SECT. 2—As to Subject matter.**

**Original and**  
**appellate**  
**jurisdiction**

13 The jurisdiction of courts is either original or appellate, and in either case may be unlimited or limited as to the nature of the actions and matters of which the particular court has cognisance The Judicial Committee of the Privy Council appears to be the only court in England which has jurisdiction in every kind of action, as its appellate jurisdiction is not only co-extensive as regards the classes of actions with that of the House of Lords and that of the Supreme Court of Judicature, but also includes jurisdiction in criminal matters, and it is the ultimate Court of Appeal from all civil courts from which appeal does not lie to the Supreme Court of Judicature or to the House of Lords (i)

750, *Koster v. Calverwood* (1877), 3 Ex. D. 1, C. A., *Re Aylmer, Ex parte Bischoffshelm* (1887), 20 Q. B. D. 258, 262, *R. v. Shropshire County Court Judge* (1887), 20 Q. B. D. 2, 248, *British Wagon Co. v. Gray*, [1896] 1 Q. B. 35, C. A.

(a) *R. v. Essex J. Ct.*, [1895] 1 Q. B. 38, C. A. See as to consent in county courts, title CO.

(b) See, e.g., *Fry v. Moore* (1889), 23 Q. B. D. 395, C. A., *Oulton v. Radcliffe* (1874), L. R. 9 Q. P. D. 1189

(c) *Green v. Ruthale, rforth* (1750), 1 Ves. Sen. 462

(d) *Rorke v. Errington* (1859), 7 H. L. Cas. 617, 632.

(e) *A-G. v. Hotham* (Lord) (1827), 3 Russ. 415

(f) *Thompson v. Sh.*, 1840, 3 L. Eq. R. 135

(g) See per WILLES, J., in *London Corporation v. Cox* (1867), L. R. 2 H. L. 239, at p. 254

(h) *Ibid.*, at pp. 278, 279, 280, 282. As to Prohibition generally, see title CROWN PRACTICE, and as to pleading to the jurisdiction, see title PLEADING.

(i) See p. 28, post, title,

In the case of all other courts there is some limitation, be it greater or less, of the classes of actions or matters of which they have cognisance. This subject of the extent of the jurisdiction of particular courts is dealt with under each particular court (*k*). § 207. 2.  
The  
Jurisdiction  
of Courts

14 When a court exceeds its jurisdiction by maintaining an action or matter of which it has not cognisance by law, the Supreme Court has power to issue a writ of prohibition to restrain such excessive exercise of jurisdiction. It appears that this jurisdiction extends to cases in which the Judicial Committee of the Privy Council exceeds its jurisdiction (*l*). An excessive exercise of jurisdiction in the case of the High Court itself can be challenged by appeal to the Court of Appeal, and in the case of the Court of Appeal, by appeal to the House of Lords. The House of Lords, however, is the supreme tribunal, and as such is the judge of the extent of its own jurisdiction, and there is no means of questioning or challenging any exercise of jurisdiction on the part of that court. Remedy for  
exceeding  
jurisdiction.

15 As regards proceedings in divorce and other matrimonial causes, the jurisdiction of the English courts depends, in the case of divorce, on the domicile of the parties (*i.e.*, of the husband, as the wife's domicile is that of the husband) being in England at the time of the commencement of the suit (*m*). In suits for judicial separation the rule as to domicile is relaxed in favour of the wife, by allowing her to sue when the matrimonial residence is in England when proceedings are commenced (*n*). In nullity suits an English court has jurisdiction, whatever the domicile or matrimonial residence may be, provided that the marriage took place in this country (*o*). In suits for restitution of conjugal rights it would seem that residence by both parties at the time proceedings are commenced is sufficient to give jurisdiction to the English courts (*p*). Matrimonial  
causes

16 As to testamentary matters, the English courts have jurisdiction if the deceased was domiciled in England at the date of his death (*q*), but not, as a general rule, if the deceased Wills

(*k*) See *post*, *passim*

(*l*) *Ex parte Smyth* (1835), 3 Ad. & El. 719. In this case on an application to issue a writ of prohibition to the Judicial Committee, LITTLERDALE, J., in delivering the judgment of the court, said: "Whether they are right in so decreeing or not is a question of practice, not of jurisdiction. The temporal courts cannot take notice of the practice of the ecclesiastical courts, or entertain a question whether, in any particular cause admitted to be of ecclesiastical cognisance, the practice has been regular. The only instances in which the temporal courts can interfere by way of prohibiting any particular proceeding in an ecclesiastical suit, are those in which something is done contrary to the general law of the land, or manifestly out of the jurisdiction of the court" (*ibid.*, at p. 724). See title CROWN PRACTICE.

(*m*) See title CONFLICT OF LAWS, Vol. VI., p. 262.

(*n*) *Christian v. Christian* (1897), 78 L. T. 86, and see title CONFLICT OF LAWS, Vol. VI., p. 264.

(*o*) *Roberts v. Brennan*, [1902] P. 143, at p. 144, and see title CONFLICT OF LAWS, Vol. VI., p. 265.

(*p*) See title CONFLICT OF LAWS, Vol. VI., p. 265.

*Spratt v. Harris* (1833), 4 Hag. 405, *Re Winter* (1861), 30 L. J. (P. M. & A.),

**SECT. 2**  
**The**  
**Jurisdiction**  
**of Courts**

**Extent of**  
**jurisdiction**

was not so domiciled, unless he leaves personal property within this country (a).

**SUB-SECT. 3 —As to Area.**

**17** The authority of the King extends over all his subjects wherever they may be, and also over all foreigners who are within the realm. The jurisdiction of English courts of law, however, is limited, first, by the stipulations contained in the enactments by which the kingdoms of Scotland and Ireland were incorporated in the United Kingdom, secondly, by the charters of justice, letters patent, and statutes affecting particular colonies, and, thirdly, by the consideration that no English court will decide any question where it has not the power to enforce its decree.

The jurisdiction of each particular court is that which the King has delegated to it, and this delegation has been complete, for the King has distributed his whole power of judicature to divers courts of justice (b)

**Real actions**

**18** As English courts have no power to enforce their decisions in questions as to the title to land or trespass to land outside the realm, they will not entertain actions to try such matters (c)

**Offences**  
**versus.**

**19.** Again, ordinary offences committed by subjects of the King in countries outside his dominions, or on the high seas on foreign ships, cannot be said to be against the King's peace or against his crown and dignity, and therefore by the common law, and apart from statutes, English courts have no jurisdiction in such cases (d)

**Personal**  
**actions**

**20** Personal actions of a transitory nature (e), on the other hand, whether in contract or in tort, are within the jurisdiction of

(a) *Evans v Burrell* (1859), 26 L J (P & M) 82, and see title **CONFLICT OF LAWS**, Vol VI, pp 218 *et seq*

(b) 4 Co Inst 70 "The King hath committed all his power judiciall, some in one court and some in another, so as it any would render himself to the judgment of the King in such case where the King hath committed all his power judiciall to others, such a render should be to no effect (Y B 8 H 4, fo 19) The King doth judge by his judges (the King having distributed his power judiciall to several courts), and the King hath wholly left matters of judicature according to his lawes to his judges (Y B 8 H 6, fo 20)" (*ibid*, 71)

(c) *British South Africa Co v Companhia de Mocambique*, [1893] A. C. 602 The Probate, Divorce and Admiralty Division of the High Court will not grant an injunction restraining a foreigner, who has had an English domicile, but has gone abroad for the purpose of obtaining a foreign domicile, from taking divorce proceedings in the court of the foreign country where he has acquired such domicile (*Vardopulo v Vardopulo* (1909), 25 T L R 518, C A, and see *Hyman v Helm* (1883), 24 Ch D 531, *per* COTTON, L J, at p 536)

(d) Pollock and Maitland, *History of English Law*, Vol II, p 461

(e) *Doulton v Matthews* (1792), 4 Term Rep 503 "It is now too late for us to inquire whether it were wise or politic to make a distinction between transitory and local actions (see title **ACTION**, Vol I, p 50), it is sufficient for the courts that the law has settled the distinction, and that an action *quare clausum fregit* is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad, but not such as are in their nature local" (*per* BULLER, J, *ibid*, p 504), *Phillips v Eyre* (1870), L R. 6 Q B 1, Ex Ch. "Our courts are said to be more open to admit actions founded upon foreign transactions than those of any other European country, but there are restrictions in respect of locality, which exclude some foreign causes of action altogether, namely those which would be local if they arose in England, such as trespass to land, and even with respect to those not falling within that

\* English courts, even though the cause of action arose abroad, and even an action in respect of an assault committed by a foreigner on a foreigner abroad may be tried by the courts of this country if process can be properly served (*f*)

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21 By the common law there was no power to try offences committed by foreigners on board foreign ships below low-water mark, though within the territorial waters of His Majesty's dominions (*g*), but in 1878 such offences were brought within the jurisdiction (*h*).

Offences in  
territorial  
waters

22 All English courts, however, have not the whole of this jurisdiction. Thus, the courts of the counties palatine, county courts, and borough and other local civil courts, have only had a jurisdiction limited in area conferred upon them, and the jurisdiction of such courts is strictly limited to the precinct defined by the statute or royal grant by which they are created or regulated (*i*)

Limited  
jurisdiction.

23 In the case of such English courts as do not possess jurisdiction extending over the whole of England, but only jurisdiction limited to some particular precinct, there is by the common law no power to order the service of the writ of summons outside the area of jurisdiction (*a*), but this power has been conferred on many courts by statute or by statutory Rules and Orders (*b*).

Service out  
of the  
jurisdiction

### SECT. 3.—Creation of Courts

24 Courts are created by the authority of the King as the fountain of justice (*c*). This authority is exercised either by description, our courts do not undertake universal jurisdiction" (*per* WILLIAMS, J., *ibid.*, at p. 28)

How courts  
are created.

(*f*) Down to Lord Mansfield's time it was doubted whether a tort committed abroad could be tried here, but in *Mostyn v Fabrigas* (1774) 1 Smith, L. O., 11th ed., 591, it was decided that the jurisdiction of the English courts extends so far, see *British South Africa Co v Companhia de Mocimboque*, [1893] A. C. 602, at p. 614

As to foreign sovereigns and governments, see title ACTION, Vol. I, p. 18; CONFLICT OF LAWS, Vol. VI, p. 232, and as to diplomatic officers, see title ACTION, Vol. I, p. 19, CONSTITUTIONAL LAW, Vol. VI, p. 429. As to both, see also title CRIMINAL LAW AND PROCEDURE, p. 214, *post*.

In 1827 the Law Officers of the Crown advised that neither the Diplomatic Privileges Act, 1708 (7 Ann. c. 12), nor any construction which could properly be placed upon it, extended so far as to protect the mere servants of ambassadors from arrest on criminal charges. Lord Dudley, who was then Secretary of State for Foreign Affairs, informed the Government of the United States that when a servant of a foreign minister was charged with a criminal offence the magistrate ordering the arrest would take the proper measures for apprising the minister, either by personal communication or through the Foreign Office, of the fact of a warrant having been issued before any attempt would be made to execute it, in order that the convenience of the minister might be consulted as to the time and manner of execution of the warrant.

(*g*) *R v Keyn* (1876), 2 Ex. D. 63, C. C. R.

(*h*) Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73)

(*i*) See as to the jurisdiction of these courts, *post*, under each particular court.

(*a*) As to service out of the jurisdiction generally, see p. 57, *post*.

(*b*) As to service out of jurisdiction in county courts, see title COUNTY COURTS, Vol. VIII, pp. 472, 477, and in other courts of limited jurisdiction, *see* under the several particular courts, *post*.

(*c*) *Baa. Abr. tit. Prerogative (D)* (1). "All jurisdiction exercised in these Kingdoms, that are in obedience to our King, is derived from the Crown, and

### SECT 2. Creation of Courts

statute (*d*), charter (*e*), letters patent (*f*), or Order in Council (*g*). In some cases a court is held by prescription, as having existed from time immemorial, with the implication that there was at some time a grant of the court by the King, which has been lost (*h*).

An Act of Parliament is necessary to create a court which does not proceed according to the common law (*i*). The King, however, may grant a court with jurisdiction to hear and determine actions according to the common law, either limited or unlimited (*k*). The King may also grant the franchise of cognisance of pleas, by which the grantee obtains cognisance of all pleas within the limits of the grant, which are commenced in other courts than that of the grantee (*l*). The King may also grant an exempt jurisdiction, whereby the inhabitants of a city or borough may not be sued except within that city or borough (*m*).

The proposition that an Act of Parliament is necessary to create a court the procedure of which is not according to the common law is subject to the qualification that it does not apply to a Crown colony, properly so called, that is, a colony which has not received a grant of representative government. In the case of such a colony a bishopric may be constituted and ecclesiastical jurisdiction conferred by the sole authority of the Crown, yet letters patent granting such jurisdiction will not have any effect or operation in a colony possessed of an independent legislature (*n*).

the laws, whether of a temporal, ecclesiastical, or military nature, are called his laws, and it is his prerogative to take care of the due execution of them. Hence all judges must derive their authority from the Crown, by some commission warranted by law, and must exercise it in a lawful manner, and without any the least deviation from the known and stated forms" (*ibid*). See also title CONSTITUTIONAL LAW, Vol VI, p 402.

(*d*) As in the case of the former Court of Common Pleas by Magna Carta, and in the case of the Supreme Court of Judicature by the Judicature Act, 1873 (36 & 37 Vict c 66).

(*e*) As in the case of the High Courts in India (Statutory Rules and Orders Revised, Vol VI, India, pp 3, 16, 28, 41), and in the case of the Civil Courts of Record granted to boroughs in England, see pp 138 *et seq*, *post*.

(*f*) For instance the Newfoundland Act, 1824 (5 Geo 4, c 67), gives power to His Majesty, by his Charter or Letters Patent under the Great Seal, to institute a Superior Court of Judicature in Newfoundland. The court, however, was instituted by charter (Statutory Rules and Orders Revised, Vol IX, Newfoundland, p 6).

(*g*) As in the case of the Cyprus Courts of Justice Order, 1882 (Statutory Rules and Orders Revised, Vol V, Foreign Jurisdiction, p 341).

(*h*) As in the case of the Court of Arundel, see p 139, *post*.

(*i*) *Dodwell v Oxford University* (1680), 2 Vent 33. "No court other than such as proceed according to law can be, unless by prescription or Act of Parliament," *per curiam, ibid*, p 34. *Re Natal (Bishop)* (1864), 3 Moo P C C (N. S.) 115, at p 152.

(*k*) 3 Com Dig tit. Courts (P, 1), p 345.

(*l*) *Hampton v Phillips* (1627), Palm 456, *Castle v Lichfield* (1669), Hard. 605; *Gannett v Whittingham* (1886), 16 Q. B D 761.

(*m*) *Orose v Smith* (1703), 3 Salk 79.

(*n*) *Re Natal (Bishop)*, *supra*, at pp 161, 152. See, generally, title DEPENDENCIES AND COLONIES.



## Part II.—The High Court of Parliament.

### SECT 1 —*The House of Lords.*

#### SUB SECT 1 —*Constitution.*

### SECT 1 The House of Lords

**25** The House of Lords consists of (1) the peers of the realm—that is to say, of the peers of England, the peers of Great Britain, and the peers of the United Kingdom, sixteen representative peers of Scotland (elected for each Parliament), and twenty-eight representative peers of Ireland (elected for life), and (2) the lords spiritual—that is, the two Archbishops, the Bishops of London, Durham and Winchester, and the other English bishops except the eight junior bishops. The Bishop of Sodor and Man has a seat but no vote

Constitution  
of House of  
Lords.

#### SUB-SECT 2 —*Jurisdiction.*

##### (1) *Original Jurisdiction.*

**26** The jurisdiction of the House of Lords is original and appellate. The original jurisdiction arises in the following cases —

Original  
jurisdiction.

##### (a) *Trial of a Peer or Peeress for Treason, Felony, or Misprision*

**27** Where it is alleged that a temporal peer or peeress (o), whether of the United Kingdom or Ireland, has committed treason or a felony, or misprision of either, then, if Parliament be sitting, the House of Lords has jurisdiction to try the accused. In cases of misdemeanour a peer is triable by a jury as other persons are (p)

Treason,  
felony, or  
misprision

A peer is appointed, on the address of the Lords, as Lord High Steward *pro hac vice* (q) to preside over the court, but he has not judicial functions beyond his fellow peers. The statutory provision as to summoning all peers (r) applies to trials in the House of Lords as well as to trials in the court of the Lord High Steward (s).

##### (b) *Impeachment*

**28** The original jurisdiction of the House of Lords also arises on an impeachment of any subject, either peer or commoner, by the House of Commons (t). This is the most exalted form of criminal

Impeach-  
ment

(o) Bishops have not the privilege of trial by the House of Lords. See as to treason, titles CONSTITUTIONAL LAW, Vol VI, p 345, CRIMINAL LAW AND PROCEDURE, p 450, *post*

(p) *R v Vaux (Lord)* (1612), 1 Bulst 197

(q) See Journals of the House of Lords, Vol OXXXIII, 1901, July 18. The Lord High Steward (Seneschallus Angliæ). This office is very ancient, and existed before the conquest “*et sciendum est quod ejus officium est supervidere, et regulare sub rege, et immediate post regem totum regnum Angliæ, et omnes ministros legum infra idem regnum temporibus pacis et guerrarum*” (4 Co Inst. 56). This is, however, not necessary for the constitution of the court (see *Fest.* 143). Sometimes no Lord High Steward is appointed, in such a case the Lord Chancellor presides in his capacity of Speaker of the House of Lords.

(r) Treason Act, 1695 (7 & 8 Will 3, c 3), s 11

(s) *Trial of the Earl of Kilmarnock* (1746), 18 State Tr 442, and see p 26, *post*.

(t) The latest instances of an impeachment are the cases of Warren Hastings

**SECT 1**  
**The House**  
**of Lords**

procedure, and has this peculiarity, that, while in other cases a pardon may be pleaded in bar, a pardon cannot be pleaded in bar of an impeachment by the House of Commons (u) The Crown may, however, pardon the offender after conviction If the accused is a peer, a Lord High Steward is appointed, for the occasion, to preside, while if a commoner is on his trial either the Lord Chancellor or the Speaker of the House of Commons presides

(c) *Bills of Attainder*

**Attainder**

**29.** The procedure against accused persons by Bill of Attainder (x) or Bill of Pains and Penalties is legislative in form, the Bill going through all the stages of other public and general Bills, but the accused is entitled to be defended by counsel and to call witnesses before both Houses. The concurrence of the Crown, testified by the royal assent to the Bill, is necessary in this manner of proceeding The Bill is usually introduced in the House of Lords, but in the case of Bishop Atterbury it was introduced in the House of Commons

(d) *Irish Divorce Bills*

**Irish Divorce**  
**Bills**

**30** Another form of original jurisdiction in the House of Lords is in the case of an Irish Divorce Bill (y) The courts in Ireland having only power to grant a divorce *a mensa et thoro*, an Act of Parliament is necessary to dissolve a marriage of persons having an Irish domicile Divorce Bills are always introduced in the House of Lords The standing orders require the Bill to contain a clause prohibiting the marriage of the respondent with any person with whom adultery is alleged This clause is always struck out in committee (z) A report of the previous proceedings is presented to the House The Speaker of either House may issue a warrant for the examination of witnesses in India (a) If this is done, the proceedings are not interrupted by a prorogation or dissolution of Parliament Divorce Bills are committed to a committee of the whole House Counsel are heard and witnesses examined on the second reading of the Bill

(e) *Claims to Peerages and Offices of Honour*

**Peerage**  
**claims**

**31** The House of Lords also, by a committee of privileges, exercises jurisdiction over claims to peerages Its jurisdiction in

in 1788, and of Lord Melville in 1800 As to the extent of the jurisdiction, see Lord Rochester's Report of Proceedings of Impeachments (Hatsell, *Precedents of Parliament*, Vol IV, Appendix No 10, p 397)

(u) Act of Settlement, 1700 (12 & 13 Will 3, c 2), s 3

(x) A Bill to declare a person attainted—that is to say, under the stain or corruption of blood formerly incurred by a criminal condemned for treason or felony.

(y) Before the passing of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c 85), marriages in England were not subject to dissolution by the Ecclesiastical Courts, which had jurisdiction in matrimonial causes, and the only manner of dissolving an English marriage was by Divorce Bill, in the same manner as is now necessary in the case of Irish marriages Since the passing of the Indian Divorce Act (Act No IV of 1869) a Bill is no longer necessary in order to dissolve an Indian marriage

(z) Standing Orders of the House of Lords, No 176

(a) Divorce Bills Evidence Act, 1820 (1 Geo 4, c 101) The Lord Chancellor is Speaker of the House of Lords, see title CONSTITUTIONAL LAW, Vol VII, p 58

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The House  
of Lords.

this respect arises on reference from the Crown (*b*), and the decision of the committee is by way of resolution. The Crown, however, may act on the report of the Attorney-General without referring peerage claims to the House of Lords (*c*). Since the time of Charles II. claims to peerages, where there is any doubt, have been uniformly referred to the House of Lords, and the decision there has been acted on by the Crown (*d*).

In peerage cases there are two questions, one of law, that of the existence and nature of the dignity, the other of fact, that of the descent of the claimant. A decision on the first point, that of law, is apparently not conclusive as to persons other than the particular claimant and those claiming under him (*e*). A decision on the second, that of fact, is not conclusive, at all events against other claimants.

(*f*) *Controverted Elections of Representative Peers of Scotland or Ireland*

**32.** The House of Lords has jurisdiction to decide questions as to contested elections of the sixteen representatives of the peerage of Scotland (*f*) and of the twenty-eight representatives of the peerage of Ireland (*g*), and also questions of claims to vote at such elections. The procedure is as in peerage claims (*h*). Contested elections.

(*g*) *Contempt or Breach of Privileges of the House*

**33** The House of Lords also exercises a jurisdiction over persons guilty of contempt, or breach of the privileges (*i*) of the House. In such a case the person complained of is ordered to attend the House. The House has power to impose a fine, as well as to imprison an offender. The imprisonment (*k*) may be for a fixed time, and may extend beyond the termination of the session. If the term of the imprisonment is not fixed, it remains in doubt Contempt.

(*b*) Petitions were originally heard before the King in Parliament (Rot Parl v 441, Rot Parl. 3 Hen 6, Fifth Report of the Committee on the Dignity of a Peer of the Realm, 198, 227). In 39 Eliz Thomas, Lord de la Warr, petitioned the Queen as to his precedence in Parliament. The Queen referred the question to the House of Lords, and the House to a committee (*De la Warr's (Lord) Case* (1597), 11 Co Rep 1).

(*c*) The last time the Crown determined a peerage claim without reference to the House of Lords was in the case of the claim of Mr Mildmay to the barony of Fitzwalter. This claim was originally referred to the House of Lords, but Parliament was prorogued before a decision was come to, the claim was then heard before the Privy Council, who decided in favour of the claimant 19th January, 1669-70. The writ of summons issued 10th February, 1669-70.

(*d*) See Third Report of the Committee on the Dignity of a Peer of the Realm, p 52. See also title PEERAGES AND OTHER DIGNITIES.

(*e*) Cruise on Dignities, p 320.

(*f*) Union with Scotland Act, 1706 (5 & 6 Ann c 8), Scottish Representative Peers Act, 1707 (6 Ann. c. 78) (c 23, Buff), Representative Peers (Scotland) Act, 1847 (10 & 11 Vict c. 52).

(*g*) Union with Ireland Act, 1800 (39 & 40 Geo. 3, c 67), art. 4.

(*h*) See *supra*.

(*i*) Sir Erskine May divides breaches of privilege into four classes (1) disobedience to general orders or rules of the House, (2) disobedience to particular orders, (3) indignities offered to the character or proceedings of Parliament, (4) assaults upon or insults to members, or reflections upon their character or conduct in Parliament, or interference with the officers of the House in discharge of their duty.

(*k*) The imprisonment is by way of attachment.

**SECT 1** whether the prisoner can be discharged on *habeas corpus* after a  
**The House** prorogation (*l*)  
**of Lords**

(2) *Appellate Jurisdiction*

**Appellate  
jurisdiction.**

**34** An appeal to the House of Lords lies (*m*) from any judgment or order of the Court of Appeal in England, or of any court in Scotland or Ireland from which error or appeal lay to the House of Lords by common law or statute (*n*) An appeal also lies from a decision of the Court of Criminal Appeal to the House of Lords, when the Attorney-General certifies that a decision of that court involves a point of law of exceptional public interest, and that it is desirable that a further appeal should be brought (*o*)

**Sittings.**

**35** If Parliament is prorogued, the House of Lords may by order appoint days for the hearing of appeals, and if Parliament is dissolved, His Majesty may by writing under the sign manual authorise sittings for the hearing of appeals during the dissolution of Parliament (*p*).

**SUB-SECT 2 —Judges**

**Constitution  
of court**

**36** In trials of peers before the House of Lords and on impeachments, all the members of the House (*a*) are equally judges of law and of fact, and though a High Steward may be appointed to preside, he has merely to regulate the procedure, and is a judge of law to no greater extent than any other peer He has a vote in the same manner as other peers The High Steward has the title of "His Grace" (*b*)

In the case of proceedings before the Committee of Privileges, the members of the committee are judges of law and of fact (*c*)

In the exercise of the appellate jurisdiction of the House of Lords, no appeal can be heard (*d*) unless there be present three of

(*l*) See May, *Parliamentary Practice*, 11th ed., pp 91, 92

(*m*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59) There is no appeal as to costs only (*Caledonian Rail Co v Barrie*, [1903] A C 123), or as to small errors in accounts (*The Marpessa*, [1907] A C 241), as to appeals generally, see *Yearly Supreme Court Practice*, 1909, p 1735

(*n*) That is to say, appeals to the House of Lords now lie from the Court of Session, the Commission of Teinds, and the Court of Exchequer (Exchequer Court (Scotland) Act, 1707 (6 Ann c 53), s 20), in Scotland, and the Supreme Court of Ireland

(*o*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 1 (*g*) See title **CRIMINAL LAW AND PROCEDURE**, p 433, *post*

(*p*) Appellate Jurisdiction Act 1876 (39 & 40 Vict c 59), ss 8, 9 The procedure of the House of Lords is regulated by the Standing Orders of the House, and is dealt with under title **PARLIAMENT**

(*a*) The bishops have a right to be present at criminal trials by the House of Lords, but by the canon they are prohibited from voting in capital cases They therefore ask leave to be absent from the judgment, and this being granted, they withdraw under protest, "saving to themselves and their successors all such rights in judicature as they have by law, and by right ought to have." For full form of this protest, see *Lords' Journal*, Vol CXXXIII, 18th July, 1901 By the *Constitutions of Clarendon* it was declared that bishops ought to take part in trials in the King's Court until it comes to a question of life or limb In the case of Bills of Attainder, the procedure being legislative, bishops can take full part in the proceedings

(*b*) Campbell, *Lives of the Chancellors*, Vol. III, p 557, *note*.

(*c*) May, *Parliamentary Practice*, 11th ed., p 88

(*d*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict c. 59), s 8.

the following persons: the Lord Chancellor, the Lords of Appeal in Ordinary, and such peers of Parliament as have held high judicial office, that is to say, as have been Lord Chancellors, paid judges of the Judicial Committee of the Privy Council, or judges of the Supreme Court of England or of Ireland, or of the Court of Session (*e*) The Lord Chancellor, if present, presides over the judicial deliberations of the House in appeals (*f*).

SECT. 1.  
The House  
of Lords.

**37** The Lords of Appeal in Ordinary are appointed by letters patent (*g*) The qualification is either to have held high judicial office for two years, or to have been for fifteen years a practising barrister in England or Ireland or a practising advocate in Scotland The tenure is during good behaviour (*h*). There are now four Lords of Appeal in Ordinary (*i*) Each receives a salary of £6,000 a year (*l*), and after service, including previous service in high judicial office, of fifteen years, may have a pension granted to him of £3,750 a year (*l*) A Lord of Appeal in Ordinary is entitled to sit and vote as a member of the House of Lords during his life (*m*)

Lords of  
Appeal.

**38** The lay peers have, strictly speaking, the same right to vote on judicial questions as they have on other questions This right, however, has fallen into disuse, and since 1883 no lay peer has attempted to exercise it (*n*).

Lay peers.

**39** The House of Lords has power in all cases to call on the judges to attend and assist them in their deliberations by giving their opinion on any points of law which may arise in any exercise of the judicial functions of the House This is frequently done in the case of prerogative claims The House, however, need not agree with the advice of the judges The Attorney-General and the Solicitor-General may also be called upon to advise the House, and they, like the judges, are summoned as assistants at the opening of each Parliament Such of the Privy Council as are called by writ from the Crown to attend may also be called upon to advise the House (*o*).

Attendance  
of the judges.

#### SUB-SECT. 3.—Officers

**40** The officers of the House of Lords when acting in a judicial capacity are the Clerk of the Parliaments, the Gentleman Usher of

Officers of  
House of  
Lords.

(*e*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 25, Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 5 A decision of the House of Lords on a question of law is binding upon the House (*London County Council v. London Tramways Co.*, [1898] A.C. 375)

(*f*) See title CONSTITUTIONAL LAW, Vol. VII, p. 55, for the office, duties, and privileges of the Lord Chancellor

(*g*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 6.

(*h*) *Ibid*

(*i*) Two of these have been appointed under the provisions of s. 14 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), on the extinction of the offices of the paid judges of the Judicial Committee

(*k*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 6.

(*l*) *Ibid*, s. 7

(*m*) Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 2.

(*n*) This was in the case of *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354, where Lord DENMAN, a lay peer, gave his judgment, which was in agreement with that of Lord BLACKBURN, who dissented from the rest of the law lords See May, Parliamentary Practice, 11th ed., p. 360

(*o*) Lords' Standing Orders, 6, 7.

- SECT. 1.** the Black Rod, the Clerk Assistant, the Reading Clerk, and the Sergeant-at-arms.
- The House of Lords.** The Clerk of the Parliaments (*p*) and the Gentleman Usher of the Black Rod are appointed by the Crown under letters patent. The Sergeant-at-arms is also appointed by the Crown. The Clerk Assistant and the Reading Clerk are appointed by the Lord Chancellor (*q*).
- Clerk of the Parliaments** The duties of the Clerk of the Parliaments are to make records of all things transacted by the House. The two clerks attend and take minutes of all judgments and orders.
- Black Rod** The Gentleman Usher of the Black Rod executes warrants for the commitment of persons whose imprisonment is ordered by the House and assists at the introduction of peers and other ceremonies.
- Sergeant-at-arms** The Sergeant-at-arms attends the Lord Chancellor with the mace, he also executes orders of attachment on persons who are not in London or Westminster.

## SECT. 2.—*The House of Commons.*

### SUB-SECT. 1 —*Jurisdiction*

- Jurisdiction of House of Commons** 41. The jurisdiction of the House of Commons appears to be confined to Bills of Attainder and of Pains and Penalties, Divorce Bills, and proceedings against persons for breach of privilege or for contempt. The proceedings before the committee on a private Bill in respect to the proving of the preamble are also an exercise of a quasi-judicial jurisdiction (*a*).
- Procedure.** 42. In the case of Bills of Attainder and of Pains and Penalties witnesses are heard and the accused is entitled to be represented by counsel on the committee stage (*b*). In the case of Divorce Bills, after second reading the Bill is referred to the Select Committee (*c*) on Divorce Bills (*d*), which committee requires evidence to be given before them that an action for divorce has been brought before a competent court and judgment obtained therein (*e*). When the petitioner has attended the House of Lords on the second reading, the committee are to require him to attend before them to answer any questions they may think fit to put to him (*f*).

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(*p*) On entering his office the Clerk of the Parliaments makes a declaration under the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), to make true entries and records of what is done in Parliament, and to keep such things secret and not to disclose them before they are published, except to such as they ought to be disclosed to. The full text of the declaration will be found in *Lords' Journal*, Vol. LXXXVII, 25th June, 1855 p. 244.

(*q*) Clerk of Parliaments Act, 1824 (5 Geo. 4, c. 82), s. 3.

(*a*) Formerly the trial of election petitions was referred to a select committee, but the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11, transferred this jurisdiction, and it is now exercised by judges of the High Court (see title **ELECTIONS**).

(*b*) See p. 20, *ante*.

(*c*) A select committee is one appointed by the House to consider any matters referred to it, or any Bill committed to it (*May, Parliamentary Practice*, 11th ed., p. 400).

(*d*) Standing Order 206 of the House of Commons.

(*e*) *Ibid.* 190.

(*f*) *Ibid.* 191.

In proceedings against persons for breach of the privileges of the House, the procedure is similar to that in the House of Lords, but the House of Commons only punishes the offender by imprisonment, and not by fine (g), and the imprisonment is not for a fixed period, but is during the pleasure of the House. A prorogation has the effect of entitling the offender to be immediately discharged. If this is not done, a writ of *habeas corpus* will issue (h).

SECT. 2.  
The House  
of Commons.

#### SUB-SECT. 2—Officers

**43** The officers of the House of Commons are the Under-Clerk of the Parliaments to attend upon the Commons, usually called the Clerk of the House, the Clerk Assistant, the Second Clerk Assistant, and the Sergeant-at arms

Officers of  
House of  
Commons

The Clerk of the House is appointed for life by the Crown by letters patent. His duties are to "make true entries, remembrances, and journals of all things done in the House" (i). He signs addresses, votes of thanks, and orders of the House, he has the custody of all records and documents, and is responsible for the conduct of business in the departments under his control, and he also assists the Speaker and advises members on questions of order and the proceedings of the House. On the election of a Speaker he puts the necessary questions, as he does on the adjournment of the House in the absence of the Speaker (k).

Clerk of the  
House

The Clerk Assistant and the Second Clerk Assistant are appointed by the Crown under the sign manual on the recommendation of the Speaker. Their duties are to take notes of all the proceedings and votes of the House, from which the Journal is prepared. They are removable only on the presentation to the Crown of an address by the House (l).

(g) The House of Commons has never punished a breach of privilege by fine since 1686 (May, *Parliamentary Practice*, 11th ed., pp. 91, 93).

(h) *Stockdale v. Hansard*, *Parliamentary Papers*, 1839 (253), p. 142. See also *Burdett v. Abbot* (1811) 14 East, 1. "The power of the House of Commons to commit for contempt stands upon the ground of reason and necessity independent of any positive authorities on the subject, but it is also made out by the evidence of usage and practice. The resolution of the House that the plaintiff had been guilty of a breach of its privileges, and the order made for his commitment for that offence were in conformity to their power. The warrant issued by the Speaker was made in the due execution of their order" (*per* Lord ELLENBOROUGH, C.J., at p. 158), and *Bradlaugh v. Gossett* (1884), 12 Q. B. D. 271. "The House of Commons has the exclusive power of interpreting the statute so far as the regulation of its own proceedings within its own walls is concerned, and even if that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly" (*per* STEPHEN, J., at p. 280). In the case of a writ of *habeas corpus* being applied for the custom is now for the Sergeant-at-arms to make a return. The courts of law, however, have no jurisdiction to, and will not, inquire into the cause of commitment, nor admit the prisoner to bail (*Case of the Sheriff of Middlesex* (1840), 11 Ad. & El. 273). As to the powers of the House of Commons over members, see title PARLIAMENT.

(i) He makes a declaration under the Promissory Oaths Act, 1866 (31 & 32 Vict. c. 72), to make true entries, remembrances, and journals of the things done and passed in the House of Commons.

(k) May, *Parliamentary Practice*, 11th ed., pp. 200, 201.

(l) House of Commons Offices Act, 1856 (19 & 20 Vict. c. 1).

SECT 2  
The House  
of Commons  
Sergeant-at-  
arms.

The Sergeant-at-arms is appointed by the Crown under a warrant to the Lord Chamberlain of the Household and letters patent His duties are to arrest and to have the custody of persons ordered to be imprisoned for breach of privilege (*m*). He may be removed on an address from the House (*n*)

## Part III.—Court of the Lord High Steward.

**Trial of peers**     **44** If a peer has to be tried for treason or felony when Parliament is not sitting, the trial is had before the Court of the Lord High Steward of England (*o*) In such a case a commission is issued appointing some peer Lord High Steward and requiring such peers as he shall summon by his precept to be attendant on him In early days it became the custom to summon only a limited number of peers to the court, but in 1695 (*p*) it was enacted that all peers (*q*) having a right to sit and vote in Parliament must be summoned in the case of trials for treason or misprision of treason In the case of a trial for felony this Act does not apply (*r*) No case of a trial before this court has occurred since the Revolution (1689) (*p*)

No general appointment to the office of the Lord High Steward has been made since the office merged in the Crown on the accession of Henry IV on the 30th September, 1399 Appointments are, however, made *pro hac vice* on the occasion of a coronation or the trial of a peer (*c*)

**Procedure**     **45.** After indictment and the finding by a grand jury of a true bill (*d*), the procedure in the Court of the Lord High Steward is generally as in other criminal trials The Lord High Steward is sole judge of law and practice The verdict is by vote Each lord tries in turn, beginning with the junior baron, giving his decision

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(*m*) The Sergeant-at-arms is justified in breaking open doors to effect an arrest (*Burdett v Abbot* (1811), 14 East, 1), but he may not remain in the house, if the person who is to be arrested is absent, to await his return (*Howard v Gossett* (1842), Car & M. 380)

(*n*) May, Parliamentary Practice, 11th ed., p. 204

(*o*) The first instance on record of the holding of this court was on the trial of John, Earl of Huntingdon, in 1400 See 3 Co Inst 28—30, and Y B (1399), Mich 1 Hen 4, No 1, fo 1 This record has, however, been attacked as not being authentic See Harcourt, "His Grace the Steward and the Trial of Peers," p 416, and, on the other hand, Pike, Constitutional History of the House of Lords, p 212 However, in 1499 the trial of the Earl of Warwick was undoubtedly held before the Court of the Lord High Steward

(*p*) Treason Act, 1695 (7 & 8 Will 3, c 3), s 11

(*q*) I.e. the lords temporal (see Pike, Constitutional History of the House of Lords, p 219) The last lord spiritual who sat and voted in the Court of the Lord High Steward was Thomas Docwra, Prior of St John of Jerusalem, at the trial of the Duke of Buckingham in 1521

(*r*) See also 2 Hawk. P C, 7th ed., c 44, ss 7, 8

(*b*) Lord Delamere was tried for high treason in the Court of the Lord High Steward in 1686 (11 State Tr. 510)

(*c*) See title CONSTITUTIONAL LAW, Vol. VI., p 329

(*d*) The commission of the Lord High Steward empowers him to send for the bill



as guilty or not guilty "upon my honour." The Lord High Steward has no vote. When the trial is concluded the Lord High Steward breaks his staff in token of the termination of his tenure of office. The judges are invited to attend and advise on points of law (e).

PART III  
Court of the  
Lord High  
Steward

## Part IV.—The Judicial Committee of the Privy Council.

### SECT. 1.—*Constitution.*

46 The jurisdiction of the Sovereign in Council arises out of the common law and the royal prerogative, but in most instances, so far as the United Kingdom is concerned, this jurisdiction has been transferred to the ordinary courts of law. An appeal, however, in certain cases from the United Kingdom, and in cases from courts having jurisdiction outside the United Kingdom, to the Sovereign in Council still exists.

Sovereign in  
Council

47 In 1833 the Judicial Committee of the Privy Council was constituted (f). The committee consists of the President of the Council, the Lord Keeper or first Lord Commissioner of the Great Seal of England, and all privy councillors who have held these offices, or hold or have held high judicial office, that is to say who have been lords of appeal in ordinary, judges of the Supreme Courts of England or Ireland, or of the Court of Session in Scotland (g). The Sovereign may also by sign manual appoint two other privy councillors to be members of the committee (h). Privy councillors who are or have been judges of the Supreme Court of the Dominion of Canada, or of a superior court in any of the provinces of the Dominion, or of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia, the Cape of Good Hope or Natal, or of any other British possession fixed by Order in Council (i), or chief justice or justices of the High Court of Australia, or chief justice or judges of the Supreme Court of Newfoundland, or judges of a superior court of the Transvaal or of the Orange River Colony (k), are also members of the Judicial Committee.

Judicial  
Committee.

(e) As to the procedure generally, see 2 Hawk P. O., 7th ed., c. 44, and *Ferrers' (Earl) Case* (1760), Post. 138, 142, and see p. 270, *post*.

(f) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41).

(g) There were formerly four paid judges of the Judicial Committee, but under the provisions of ss. 14 and 18 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), they have been replaced by two lords of appeal in ordinary (see p. 23, *ante*), and a judge of the Chancery Division, and a judge of the King's Bench Division.

(h) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s. 1, as amended by the Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 3.

(i) Judicial Committee Amendment Act, 1895 (58 & 59 Vict. c. 44), s. 1.

(k) Appellate Jurisdiction Act, 1908 (8 Edw. 7 c. 51), s. 3.

**SECT 1.**  
**Constitu-**  
**tion**

Any member of the Privy Council, being or having been chief justice or a judge of any High Court in British India (*l*), can by direction of His Majesty be made a member of the Judicial Committee, but there must not be more than two such members at the same time (*m*)

In 1876 an Order in Council was made regulating the attendance of the archbishops and bishops as assessors on the hearing of ecclesiastical cases (*n*)

His Majesty has also power to authorise any person who is or has been a judge of the court appealed from, or of any court to which an appeal lies from that court, to act as assessor on the hearing of the appeal. This provision applies only to British India, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Cape of Good Hope, Natal, Transvaal, Orange River Colony and Newfoundland, and any other colony which may be added by Order in Council (*o*)

A member of the Judicial Committee may resign his office by giving notice in writing to the Lord President of the Council (*p*).

**SECT 2 —Jurisdiction**

**SUB-SECT 1 —How the Jurisdiction Arises**

**Origin of**  
**jurisdiction**

**48** The jurisdiction of the Judicial Committee of the Privy Council to hear appeals to His Majesty in Council arises from an Order in Council directing that all appeals or petitions, including complaints in the nature of appeals and petitions in the matter of appeals, shall be referred to the Judicial Committee. Such an Order in Council may be made from time to time and remains in force until the order is rescinded. In the absence of such a general Order in Council a special order of reference is necessary in the case of each appeal (*q*)

**SUB-SECT 2 —Appeals in Admiralty Matters.**

**Admiralty**  
**matters**

**49** Appeals lie to the Judicial Committee from the Admiralty Court of the Cinque Ports (*r*), colonial Courts of Admiralty (*s*), and Vice-Admiralty Courts (*t*).

The appeal from all Admiralty Courts, including the High Court of Justice in prize cases, is to the Judicial Committee (*u*)

(*l*) Appellate Jurisdiction Act, 1908 (8 Edw 7, c 51), s 2 (1)

(*m*) *Ibid*, s 2 (2)

(*n*) An Order in Council was made under this power on the 15th November, 1876 (Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 114, Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59), s 14)

(*o*) Appellate Jurisdiction Act, 1908 (8 Edw 7, c 51), s 1 (1)

(*p*) *Ibid*, s 1 (2)

(*q*) Judicial Committee Act, 1844 (7 & 8 Vict c 69), s 9, as amended by Appellate Jurisdiction Act, 1908 (8 Edw 7, c 51), s 5

(*r*) *The Clarissa* (1856), Sw 129

(*s*) Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict c 27), s 6

(*t*) Vice-Admiralty Courts Act, 1863 (26 & 27 Vict c 24), s 23

(*u*) Naval Prize Act, 1864 (27 & 28 Vict c 35), ss 5—8, Judicature Act, 1891 (54 & 55 Vict c 53), s 4. Appeals under the Foreign Enlistment Act, 1870 (33 & 34 Vict c 90), ss. 14, 27, also go to the Judicial Committee. In all other cases the appeal is to the Court of Appeal (see p 62, *post*) The

SUB-SECT 3 — *Appeals from Ecclesiastical Courts*

## SECT. 3.

## Jurisdiction.

## Ecclesiastical matters.

50. In the reign of Henry VIII. (b) an appeal from ecclesiastical courts was given to the King in Chancery, to be heard by commissioners appointed under the Great Seal. This court, known as the High Court of Delegates, was abolished in 1832 by an Act which transferred the jurisdiction to the King in Council (c). This jurisdiction is now exercisable by the Judicial Committee (d).

The courts from which these appeals lie are the various provincial courts of the Archbishops of Canterbury and York (e), the diocesan courts of the bishops (f), the courts of commissaries, the archidiaconal courts, and the courts of peculiars (g). Besides these there are appeals from the court under the Benefices Act, 1898 (h), the court under the Church Discipline Act, 1840 (i), the court under the Clergy Discipline Act, 1892 (k), and from the court under the Public Worship Regulation Act, 1874 (l). If, however, the appellant under the Clergy Discipline Act, 1892 (a), elect to appeal to the court of the archbishop of the province, there is no further appeal to the Judicial Committee.

SUB-SECT 4 — *Jurisdiction as to Copyright*

51. The Judicial Committee of the Privy Council have jurisdiction to license the republication of books which the proprietor

## Copyright.

procedure is regulated by rules, made, as to Admiralty Courts, on 23rd August, 1883 (Statutory Rules and Orders Revised, Vol. II, Colonial Court of Admiralty pp. 1 *et seq.*, rr. 150—155), as to Indian Vice-Admiralty Courts, on 27th June 1832 (see Staffo. d and Wheeler's Privy Council Practice, p. 906), as to Colonial Courts of Admiralty, separate Orders have been made for many colonies (see Statutory Rules and Orders Revised, Vol. II, Colonial Court of Admiralty, pp. 1 *et seq.*), as to Prize Cases, on 11th December, 1865 (see Statutory Rules and Orders Revised, Vol. VI, Judicial Committee, pp. 98 *et seq.*, and title PRIZE LAW AND JURISDICTION).

(b) An Act for the Submission of the Clergy (1553), 2 Hen. 8, c. 19, s. 4.

(c) Privy Council Appeals Act, 1832 (2 & 3 Will. 4, c. 92), s. 13.

(d) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41).

(e) The provincial courts in the case of Canterbury are the Court of Arches, or supreme ecclesiastical court of appeal (*curia de archibus* as being held in the Church of St. Mary le Bow), the Court of the Vicar-General, the Court of the Master of the Faculties (dealing with matters relating to notaries public), the Court of Audience, and the Court of the Commissary of the Archbishop. In the case of York, the Chancery Court of York or court of appeal, and the Audience Court. "Audience Court (*Curia Audientie Cantuariensis*) is a court belonging to the Archbishop of Canterbury of equal authority with the Arches Court, though inferior both in dignity and antiquity" (*Termes de la Ley, sub voce* "Audience Court").

(f) These are the consistorial courts of each diocese, exercising general jurisdiction. Appeals from the ecclesiastical courts of the Channel Islands are heard and determined by the Bishop of Winchester in person, or if the see is vacant, by the Archbishop of Canterbury in person.

(g) The courts of ecclesiastical corporations exempt from archiepiscopal jurisdiction, as, for instance, the Dean and Chapter of Westminster, the Court of the House of Convocation of Oxford University, and probably that of Cambridge.

(h) 61 & 62 Vict. c. 48.

3 & 4 Vict. c. 86. See also *Lee v. Atherton*, [1904] A. C. 805, P. C.

(i) 55 & 56 Vict. c. 32.

(j) 37 & 38 Vict. c. 85.

(a) 55 & 56 Vict. c. 32, s. 4 (4). See generally as to Ecclesiastical Courts and the procedure therein, title ECCLESIASTICAL LAW.

**SECT. 2** of the copyright refuses to republish after the death of the  
**Jurisdiction** author (b)

**SUB-SECT. 5** — *Appeals from Courts Outside the United Kingdom*

Colonial  
 appeals.

**52** As His Majesty the King is supreme over all persons and courts within his dominions, a right of appeal in all cases civil and criminal to the King in Council exists from the highest civil court of each separate colony, province, state, or possession, whether it be a court of error or not, except so far as the prerogative in this behalf has been surrendered. Criminal proceedings, however, will only be reviewed if it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done (c). This right has been defined and regulated in the case of British colonies and possessions by statutes (d), charters of justice, letters patent, and Orders in Council (e). In some cases

(b) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 5. See title **COPYRIGHT AND LITERARY PROPERTY**, Vol. VIII, p. 163.

(c) *Falkland Islands Co. v. R.* (1863), 1 Moo. P. C. C. (N. S.) 299, 312, *R. v. Hill* (1870), 12 App. Cas. 459, 467, P. C.

(d) From Indian courts by the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), s. 11, from Australian courts by the Australian Courts Act (1828), 9 Geo. 4, c. 83, s. 15, and the Australian Constitutions Act, 1850 (13 & 14 Vict. c. 59), s. 28, from Newfoundland by the Newfoundland Act, 1824 (5 Geo. 4, c. 67), s. 20, and from colonial courts by the Judicial Committee Act, 1844 (7 & 8 Vict. c. 69), s. 1. See title **DEPENDENCIES AND COLONIES**.

(e) Appeals to the Privy Council are regulated in the several colonies, possessions etc. as follows — Australia (Commonwealth of), Commonwealth of Australia Constitution Act (63 & 64 Vict. c. 12), Sched. 1, s. 74, Bahamas, Supreme Court Act, 1896 (59 Vict. c. 26), ss. 41 and 42, Barbados, Order in Council of 3rd March, 1859 (Statutory Rules and Orders Revised, Vol. XIII, Windward Islands, p. 7), Basutoland, Order in Council of 2nd February, 1884 (*ibid.*, Vol. I, Basutoland, p. 1), Bermuda, Royal Instructions, Act No. 9 of 1704, s. 2, Court Act, 1814, and Bermuda Acts, 1836 (No. 15), 1876 (No. 382), British Columbia, Order in Council of 12th July, 1887 (Statutory Rules and Orders Revised, Vol. VI, Judicial Committee, p. 16), British Guiana, Order in Council of 20th June, 1831 (arts. 25–27) (*ibid.*, Judicial Committee, p. 18), British Honduras, Order in Council of 30th November, 1882 (*ibid.*, Vol. I, British Honduras, p. 4), Supreme Court Ordinance, ss. 54–61 (Consolidated Laws of British Honduras), British New Guinea, Order in Council, 6th March, 1902 (*ibid.*, Vol. I, Australia, p. 70), British North Borneo, Charter of 1st November, 1881, art. 2 (*Lond. Gas*, 8th November, 1881, pp. 5448–53), Canada (Dominion of), Revised Laws of Canada 1886, c. 135, ss. 24, 37, Canadian Act, 54 & 55 Vict. c. 23, s. 4, Cape of Good Hope, Charter of Justice of 4th May, 1832 (arts. 50, 51) (Statutory Rules and Orders Revised, Vol. VI, Judicial Committee, p. 22), Ceylon, Charter of Justice of 18th February, 1833 (*ibid.*, Vol. I, Ceylon, p. 3), Cyprus, Orders in Council, 15th July, 1881, arts. 1–5 (*ibid.*, Vol. V, Foreign Jurisdiction, p. 319), 30th November, 1882, art. 41 (*ibid.*, p. 341), Falkland Islands, Ordinance No. 2 of 1898, s. 25, Federated Malay States, Federated Malay States Order in Council, 1906, of 11th May, 1906 (Statutory Rules and Orders, 1906, p. 945), Fiji Order in Council of 22nd February, 1878 (Statutory Rules and Orders Revised, Vol. VI, Judicial Committee, p. 24), Gambia, Order in Council of 24th November, 1891 (*ibid.*, Vol. VI, Gambia, p. 5), Gibraltar, Order in Council of 17th November, 1888 (arts. 41–47) (*ibid.*, Vol. VI, Gibraltar, p. 19), Gold Coast, Order in Council of 23rd October, 1877 (*ibid.*, Vol. VI, Judicial Committee, p. 27), Hong Kong, Royal Instructions, 21st January, 1846, 19th January, 1888 (*ibid.*, Vol. VI, Judicial Committee, p. 34), Order in Council of 23rd October, 1877 (*ibid.*, Vol. V, Foreign Jurisdiction, p. 248), India, Order in Council of

of self-governing colonies the colonial legislature has had power delegated to it by the Imperial Parliament to make laws limiting the matters in which special leave to appeal to the Privy Council may be asked, but such proposed laws are to be reserved for His Majesty's pleasure (f)

SECT. 4.  
Jurisdiction.

Appeals from the Channel Islands lie to the King in Council as Duke of Normandy, and are heard by the Judicial Committee in the same way as colonial appeals (g)

Channel  
Islands.

10th April, 1838 (*ibid*, Vol VI, Judicial Committee, p 37), Letters Patent of 28th December, 1865, and 17th March, 1866 (*ibid*, Vol VI, India, pp 3, 16, 28, 41), Act 14 of 1882, ss 595 *et seq*, Act 10 of 1897, s 3 (24), Act 17 of 1875, Jamaica, Order in Council of 14th April, 1801 (*ibid*, Vol VI, Judicial Committee, p 41), Judicature Law, 1879 (No 24 of 1879), Leeward Islands, Order in Council, 24th March, 1880 (*ibid*, Vol VI, Judicial Committee, p 50), Supreme Court Acts, 1873, 1880, 1884, 1887, Malta, Order in Council of 18th December, 1824 (*ibid*, Vol VI, Judicial Committee, p 52), Manitoba, Orders in Council, 26th November, 1892 (*ibid*, Vol VI, Judicial Committee, p 55), Mauritius, Order in Council, 13th April, 1831, 23rd October, 1851 (*ibid*, Vol VIII, Mauritius, pp 21, 25), Natal, Order in Council, 19th July, 1870 (*ibid*, Vol VI, Judicial Committee, p 58), New Brunswick, Order in Council of 27th November, 1852 (*ibid*, Vol VI, Judicial Committee, p 61), New South Wales, Order in Council of 13th November, 1850 (*ibid*, Vol VI, Judicial Committee, p 64), New Zealand, Order in Council of 16th May, 1871 (*ibid*, Vol VI, Judicial Committee, p 68), Newfoundland, Charter of Justice of 19th September, 1825 (*ibid*, Vol IX, Newfoundland, p 5), North-West Territories, Order in Council of 30th July, 1891 (*ibid*, Vol VI, Judicial Committee, p 71), Canadian Acts, 49 Vict c 50, Nova Scotia, Order in Council of 20th March 1863 (*ibid*, Vol VI, Judicial Committee, p 73), Ontario, Revised Statutes of Ontario, 1897, s 4, c 48, p. 549 (Orange River Colony, Order in Council of 23rd June, 1901 (Statutory Rules and Orders, 1904, p 695), Prince Edward Island, Common Law Procedure Act, 1873 (36 Vict c 22 (Prince Edward Island), s 158, Royal Instructions read to Sir J Colborn 13th December, 1838, Quebec, Code of Civil Procedure, arts 1178—1182, Queensland, Order in Council of 30th June, 1860 (*ibid*, Vol VI, Judicial Committee, p 77), St Helena, Order in Council of 13th February, 1839 (*ibid*, Vol XI, St Helena, p 1), Seychelles, Order in Council of 10th August, 1903, art 14 (*ibid*, Vol XI, Seychelles, p 9), Sierra Leone, Order in Council of 26th February, 1867 (*ibid*, Vol VI, Judicial Committee, p 81), and 24th November, 1891 (*ibid*, Vol VI, Gambia, p 5), South Australia, Order in Council of 9th June, 1860 (*ibid*, Vol VI, Judicial Committee, p 85), Southern Nigeria, Orders in Council of 5th July, 1899 (*ibid*, Vol VI, Judicial Committee, p 47), 29th December, 1887, 24th July, 1901 (*ibid*, Vol V, Foreign Jurisdiction, pp 150, 151), Straits Settlements, Civil Appeals Ordinance, 1893 (No 2 of 1893), Swaziland, Order in Council of 27th February, 1906 (Statutory Rules and Orders, 1906, p 948), Tasmania, Charter of Justice of 4th March, 1831 (Statutory Rules and Orders Revised, Vol I, Australia, p 50), Transvaal, Order in Council of 16th September, 1902 (*ibid*, Vol VI, Judicial Committee, p 88), Trinidad and Tobago, Orders in Council, 17th November, 1868, and 20th October, 1898 (*ibid*, Vol XIII, Trinidad and Tobago, pp 4, 5), Judicature Ordinance, 1879, Judicature (Tobago) Ordinance, 1898, Victoria, Order in Council of 9th June, 1860 (*ibid*, Vol VI, Judicial Committee, p 90), Supreme Court Act, 1890, s 231, Western Australia, Order in Council of 11th October, 1861 (*ibid*, Vol VI, Judicial Committee, p 93), Windward Islands, Orders in Council of 3rd March, 1859 (*ibid*, Vol XIII, Windward Islands, p 7) See also title DEPENDENCIES AND COLONIES

(f) In the case of the Commonwealth of Australia, by the Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), Sched. (74)

(g) Appeals from Jersey are regulated by Orders in Council of 19th May, 1871, and 15th July, 1835 (Statutory Rules and Orders Revised, 1904, Vol VI, Judicial Committee, pp 33, 44) Those from Guernsey by Orders in Council of 13th May, 1823, and 15th July, 1835 (*ibid*, pp. 30, 33).

**SECT 2.**  
**Jurisdiction.**  
—  
Appeal by  
special leave

**53** Besides those cases in which appeals lie by right of a grant contained in the instrument constituting the court, a person aggrieved by a decision of a court may present a petition, supported by affidavit, praying for leave to appeal to the Judicial Committee on special grounds (*h*). Such leave will not be granted in cases where it can be shown that the prerogative power to grant leave to appeal has been surrendered (*i*). If the Court below has power to grant leave to appeal an application for leave should be made to that court in the first instance (*k*).

Appeals  
under Foreign  
Jurisdiction  
Act.

**54** In addition to the British colonies and possessions, there are places where, by treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction, and where, under the Foreign Jurisdiction Act, 1890 (*l*), and the Acts repealed by that statute, courts have been established. The appeals from these courts are governed by the Orders in Council establishing or otherwise regulating them (*m*). These appeals are in some cases direct to the King in Council (*n*), and in others to some colonial court and thence to the King in Council (*o*).

(*h*) The petition must disclose all the circumstances under which the leave is sought (*J. Hall v Jardine* (1870), 7 Moo P C O (N S) 116, *Missouri Bank v Raynor* (1882) 7 App Cas 321, 328, P C, *Baudains v Jersey Banking Co* (1888), 13 App Cas 832, P C), must indicate the questions to be raised at the hearing (*Soree Monce Douce v Juggut Indro Narain Chowdery* (1866), 11 Moo Ind App 1), and disclose a case in law and on the merits. The petition must also show special grounds for its being granted (*Ex parte Kensington* (1863), 15 Moo P C O 209). See also, as to appeals, title **DEPENDENCIES AND COLONIES**.

(*i*) As in the case of questions as to the limits *inter se* of the constitutional powers of the Commonwealth of Australia, and those of any State etc., see Commonwealth of Australia Constitution Act, 1900 (81 & 64 Vict c 12), Sched (clause 74). See *Kennedy v Purcell* (1886), 59 L T 279, P C, *Théberge v Lady* (1876), 2 App Cas 102, P C, or where the court is to be guided by equity and good conscience (*Moses v Parker*, [1896] A C 245 P C).

(*k*) *Ex parte Kensington* (1863), 15 Moo P C O 209.

(*l*) 53 & 54 Vict c 37.

(*m*). The appeals from these courts are regulated as follows.—Africa, Order in Council of 10th October, 1880 (art 82) (Statutory Rules and Orders Revised, Vol V, Foreign Jurisdiction, pp 1, 22), Order in Council of 20th October, 1898 (*ibid*, pp 115, 127), Brunei, Order in Council of 24th July, 1901 (arts 69—80) (*ibid*, pp 189, 206), China and Corea, Order in Council of 24th October, 1904 (arts 87, 115—117) (Statutory Rules and Orders, 1904, pp 223, 231, 232), Eastern Africa, Order in Council of 11 August, 1902 (arts 9—11) (Statutory Rules and Orders Revised, Vol V, Foreign Jurisdiction, pp 49, 50), Morocco, Order in Council of 28th November, 1889 (arts 44, 105) (*ibid*, pp 425, 441, 454), Muscat, Order in Council of 4th November, 1867 (arts 6—14) (*ibid*, pp 472, 474), North-Eastern Rhodesia, Order in Council of 21st January, 1900 (art 28) (*ibid*, pp 56, 63), Ottoman Dominions, Order in Council of 8th August, 1899 (arts 62, 133—135) (*ibid*, pp 742, 763, 780), Pacific Ocean, Order in Council of 15th March, 1893 (art 86) (*ibid*, pp 484, 511), Persia, Order in Council of 13th December, 1889 (arts 230—232) (*ibid*, pp 575, 624), Persian Coast and Islands, Order in Council of 13th December, 1889 (arts 23—31) (*ibid*, pp 667, 676), Siam, Order in Council of 16th February, 1903 (arts 103—107) (*ibid*, pp 691, 723), Somaliland, Order in Council of 7th October, 1899 (art 23) (*ibid*, pp 173, 181), Wei-hai-Wei, Order in Council of 24th July, 1901 (arts 68—80) (*ibid*, pp 283, 300—303), Zanzibar, Order in Council of 7th July, 1897 (art 29) (*ibid*, pp 87, 97).

(*n*) In the cases of Africa, China and Corea, Eastern Africa, North-Eastern Rhodesia, the Ottoman Dominions, Persia, and Somaliland.

(*o*) In the case of Brunei and Siam, to the Supreme Court of the Straits.

SUB-SECT 6 — *Jurisdiction as to Schemes for Endowed Schools.*SECT. 2.  
**Jurisdiction.**  
Endowed  
schools.

55 The governing body of any endowment to which a scheme under the Endowed Schools Act, 1869 (*p*), relates, or any person or corporation aggrieved by the scheme, may, in certain cases, within two months after publication of the scheme when approved, petition His Majesty in Council against the scheme (*q*). Such petitions are to be referred to the Judicial Committee as if they were appeals from courts from which an appeal lies to the Judicial Committee (*r*).

SECT. 3 — *Practice and Procedure*SUB-SECT 1 — *Ordinary Appeals*

56 The practice and procedure of the Judicial Committee in ordinary appeals is, as from 1st January, 1909 (*s*), regulated by Orders in Council made in that behalf on 6th March, 1896 (*a*), and 21st December, 1908 (*b*)

Regulation  
of practice.(1) *Leave to Appeal*

57 Appeals lie either by the right of grant, in pursuance of leave obtained by the appellant from the court appealed from, or by reason of special leave granted by the Judicial Committee (*c*). The latter appeals arise either where leave to appeal has been refused by the court below, or where the leave to appeal was granted on some special point, and the appellant wishes to raise points not included in the leave to appeal or not decided at some stage in the action previous to the decision of the court appealed from, or where the court below does not possess power to grant leave to appeal. Special leave may also be obtained to avoid having recourse to an intermediate court of appeal, where a question of law is raised by the proceedings (*d*).

Leave to  
appeal

A refusal to allow an appeal to the Judicial Committee arises in most cases by reason of the court below holding that the amount in dispute is below the appealable value, in such a case, in the petition against that holding, it is advisable to ask for special leave to appeal, as the Judicial Committee, if they affirm the decision of the court below as to the amount in dispute, may still, upon its

Refusing  
leave

Settlements, of Morocco, to the Supreme Court of Gibraltar, of Muscat, the Persian Coast and Islands, and Zanzibar, to the High Court of Bombay, of the Pacific Ocean, to the Supreme Court of Fiji, of Wei-hai-Wei, to the Supreme Court of Hong-Kong, of Southern Rhodesia, to the Supreme Court of the Cape of Good Hope

(*p*) 32 & 33 Vict c 56

(*q*) Endowed Schools Act, 1869 (32 & 33 Vict c 56), s 39.

(*r*) Endowed Schools Act, 1873 (36 & 37 Vict c 87), s 14

(*s*) Judicial Committee Rules, 1908, r 88, Statutory Rules and Orders 1908, p 405, No 1288, L 43, [1909] W N, Pt II, pp 50—58

(*a*) Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 13

(*b*) *Ibid*, *ubi supra*.

(*c*) Judicial Committee Rules, 1908, r 2, Statutory Rules and Orders, 1909, p 406. See *Daily Telegraph Co v McLaughlin*, [1904] A C 776, P O, *Victorian Railways Commissioners v Brown*, [1906] A C 381, P C, *B v. Lounds*, [1904] A C 412, P O

(*d*) *Harrison v. Scott* (1846), 5 Moo P C C 357.

**SECT 3**  
**Practice and**  
**Procedure**

appearing that the question involves some general right, grant special leave to appeal(*e*)

Where the court below is not a court of error or court of appeal, power is given by Order in Council to admit appeals either generally or as to any particular case (*f*).

**Petition for**  
**leave.**

**58** The petition asking for special leave to appeal must state succinctly and fairly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted. The petition must not travel into extraneous matter, and must deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought(*g*). It is necessary that there should be *uberima fides* on the part of the petitioner(*h*).

The petitioner must lodge at least three copies of his petition for special leave to appeal together with an affidavit that, to the best of his knowledge, information, and belief, the allegations contained in the petition are true(*i*). The petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed against, but with the least possible delay(*l*). Where the Judicial Committee advise His Majesty to grant special leave to appeal, they must in their report specify the amount of security for costs (if any) to be lodged by the petitioner, and the period (if any) within which such security is to be lodged and, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the record by the registrar of the court appealed from to the registrar of the Privy Council, and provide further matters as the justice of the case may require(*l*).

**Appeal in**  
***forma***  
***pauperis***

**59** A person wishing to appeal *in forma pauperis* must apply by petition, accompanied by a certificate of counsel that there are reasonable grounds for the appeal(*m*), and by an affidavit stating that he is not worth more than £25 besides his wearing apparel and his interest in the appeal. The petition should state that he is unable to provide sureties(*n*). A petitioner *in forma*

(*e*) *Gungowa Kome Malupa v Eriawa Kome Jogapa* (1870), 13 Moo Ind App. 433, *Brown v McLaughan* (1870), L R 3 P O 458

(*f*) Judicial Committee Rules, 1908, rr 2, 3, Statutory Rules and Orders, 1908, No 1288, L 43, pp 406, 407, [1909] W N, Pt II, pp 50—58. See also Judicial Committee Act, 1844 (7 & 8 Vict. c 69), s 1 and *Ewing v Dominion Bank*, [1904] A O 808, P O, *Clergue v Murray*, [1903] A O 521, P O

(*g*) *Inall v Jardine* (1870), 7 Moo P O O. (N s) 116, *Mussoorie Bank v. Raynor* (1882), 7 App Cas 328, P O, *Baudains v Jersey Banking Co* (1888), 13 App Cas 832, P O, *Gorrie Mones Doree v Juggut Indro Narain Chowdery* (1896), 11 Moo Ind App 1, *Sheo Singh Ras v Mussumut Dakho* (1878), L R 3 Ind App 87, *Anundomoyee Chowd v Sheeb Chunder Roy* (1862), 9 Moo Ind App 287, *Ex parte Kensington* (1863), 15 Moo P O O 209

(*h*) *Ram Sabuk Bose v Monmohun Dossee* (1874), L R 2 Ind App 71, 81

(*i*) Judicial Committee Rules, 1908, r 4, *ubi supra*, p 407

(*k*) *Ibid.*, r 5

(*l*) *Ibid.*, r 6

(*m*) *Last v. Bailey* (1851), 7 Moo P O O 436, *Watts v Beaman* (1854), 9 Moo P O O 81. See also *Mitchell v New Zealand Agency Co*, [1904] A C 149, *Ponamma v Arumogam*, [1902] A C 561, *Quinlan v Quinlan*, [1901] A C 612; *Walker v Walker*, [1903] A O 170, P O

(*n*) Judicial Committee Rules, 1908, r 8, and see *Kelly v Corbett* (1860), 14 Moo P O O 89



*pauperis* is relieved from the payment of fees, and from lodging security for costs (o), but must pay for preparing and printing the record.

SECT. 2.  
Practice and  
Procedure.

If a petition to appeal *in formâ pauperis* is dismissed, the Judicial Committee may advise His Majesty to order that the petitioner may be excused from payment of the Council office fees usually chargeable to a petitioner in respect of a petition for leave to appeal (p).

An appellant *in formâ pauperis* may be awarded costs according to the rules of the House of Lords as to pauper costs (q).

#### (u) Preparation of Record

60 After an appellant has fulfilled the conditions governing an appeal so far as the court below is affected, or has obtained special leave to appeal, the appellant is required without delay to take all necessary steps to have the record transmitted to the registrar of the Privy Council (r). The record must be printed in accordance with prescribed rules (s), and may be printed either abroad or in England (t). Where the record is printed abroad, the registrar of the court below must, at the expense of the appellant, transmit to the registrar of the Privy Council forty copies of such record, one of which copies he must certify to be correct by signing his name on, or initialling every eighth page thereof, and by affixing thereto the seal of any of the courts appealed from (a).

The record.

Where the record is printed in England, the registrar must, at the expense of the appellant, transmit to the registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record may be transmitted to the agents in England by or on behalf of the parties to the appeal (b).

Where part of the record is printed abroad the above rules apply, as far as practicable, to such parts as are printed abroad and in England respectively (c).

The reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises, are to be communicated by such judge or judges in writing to the registrar, and are to be transmitted to the registrar of the Privy Council at the same time as the record is transmitted (d).

(o) Judicial Committee Rules, 1908, r 9, Statutory Rules and Orders, 1908, No 1288, L 43, p 407, [1909] W N, Pt II, pp 50-58

(p) *Ibid.*, r 10, *ubi supra*, p 408

(q) *Wasteneys v Wasteneys*, [1900] A C 446, P O. That is, no fees of counsel are allowed, but the solicitor has his out of pocket costs and a reasonable allowance to cover office expenses etc.

(r) Judicial Committee Rules, 1908, r 11, *ubi supra*, p 408

(s) *Ibid.*, r 12

(t) *I.e.*, in demy quarto on paper 11 in by 8½ in, in pica type, but accounts, tabular matter, and notes in long primer, forty-seven lines of pica to the page, each tenth line to be numbered. Fifty copies to cost 38s per sheet of eight pages (*ibid.*, Sched A)

(a) Judicial Committee Rules, 1908, r 13, *ubi supra*, p 409.

(b) *Ibid.*, r 14.

(c) *Ibid.*, r 15

(d) *Ibid.*, r 16.

**SECT. 8.**  
**Practice and**  
**Procedure**  
**Documents**

The registrar, as well as the parties and their agents, must endeavour to exclude from the record all documents (especially such as are merely formal) that are not relevant to the subject-matter of the appeal, and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents, but the documents omitted to be printed or copied must be enumerated in a list to be placed after the index or at the end of the record (*e*)

Where one party objects to the inclusion of a document in the record, on the ground that it is unnecessary or irrelevant, and the other party insists on its being included, the record as finally printed must, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to (*f*)

**Registration**  
**of record**

The record must be registered in the registry of the Privy Council as soon as it is received, with the date of arrival, the names of the parties, the date of the judgment appealed from, and the description, whether "printed" or "written." A record not printed in the prescribed manner (*g*) is to be treated as written. Appeals are to be numbered consecutively in each year in the order in which they are received (*h*)

The parties are entitled to inspect the record and to extract all necessary particulars therefrom for the purpose of entering an appearance (*i*)

**Appearance**

**61** When the record arrives in England either wholly or partly written, the appellant must within four months, if the appeal comes from certain courts (*k*), and within two months in other cases, enter an appearance and bespeak a typewritten copy of the record, or of such parts thereof as it may be necessary to have copied (*l*)

After entering his appearance the appellant must forthwith give notice thereof to the respondent, if the latter has entered an appearance (*m*)

**Special case**

**62** When it appears likely that the decision of a matter on appeal will turn exclusively on a question of law, the parties, with the sanction of the registrar of the Privy Council, may submit such question of law to the Judicial Committee in the form of a special

(*e*) Judicial Committee Rules, 1908, r. 17, Statutory Rules and Orders, 1908, No. 3288, L. 43, p. 408, [1909] W. N., Pt. II, pp. 50-58

(*f*) Judicial Committee Rules, 1908, r. 18, *ubi supra*, p. 409

(*g*) See p. 35 note (*f*), *ante*

(*h*) Judicial Committee Rules, 1908, r. 19, *ubi supra*, p. 409.

(*i*) *Ibid.* r. 20

(*k*) *I.e.*, in the case of Australia (and the constituent States thereof), Basutoland, British East Africa, British Honduras, British North Borneo, Brunei, Ceylon, China, Eastern African Protectorates, Falkland Islands, Federated Malay States, Fiji, Hong-Kong, India, Mauritius, New Zealand, Persia, Seychelles, Somaliland Protectorate, Straits Settlements, Zanzibar (*ibid.*, Sched. B)

(*l*) *Ibid.*, r. 21. The costs of preparing the copies are fixed at 1*s* 4*d* per folio of English matter; 2*d* per folio of Indian matter, and 3*d* per folio of foreign matter (*ibid.*)

(*m*) *Ibid.*, r. 22.

\*case, and print such parts only of the record as may be necessary for the discussion thereof. But if the Judicial Committee think fit they may order the full discussion of the case. In order to promote such arrangements and simplification of matters in dispute, the registrar may call the parties before him, and, having heard them and examined the record, may report to the Judicial Committee as to the nature of the proceedings (n).

SECT. 8.  
Practice and  
Procedure.

**63** As soon as the appellant has obtained the typewritten copy of the record, he must arrange the documents in order, check the index, inset marginal notes, and generally do all that is necessary to prepare the copy for the printer, and, if the respondent has entered an appearance, submit the copy prepared for the printer to the respondent for approval. If the parties cannot agree the matter is to be submitted to the registrar of the Privy Council, whose decision thereon shall be final (o). Printing records.

When the typewritten copy of the record is ready for the printer, the appellant must lodge it with a request to the registrar to have it printed by His Majesty's Printer or by any other printer on the same terms, and engage to pay the prescribed price (p) for fifty copies, or such other number as in the opinion of the registrar the circumstances of the case require (q).

**64** When the proof prints of the record are ready, the registrar of the Privy Council must give notice to all parties who have entered an appearance, requesting them to attend at the registry, at a time named, to examine the proof prints and compare them with the certified record. After the examination the appellant must lodge his proof print, duly corrected and so far as necessary approved by the respondent, and the registrar must cause the copies of the record to be struck off from this proof print (r). Proof print

Each party who has entered an appearance is entitled to receive for his own use six copies of the record (s).

Subject to any special direction from the Judicial Committee, the costs of and incidental to the printing of the record form part of the costs of the appeal, but where a document has been objected to by either party (t) if such document on taxation is found to be unnecessary or irrelevant, the costs of printing it are disallowed to or borne by the party insisting on its inclusion (a). Costs of printing

#### (III.) *Petition of Appeal*

**65** The appellant must lodge his petition of appeal, where it arrives in England printed, within four months in the case of appeals from certain courts (b), and within two months in other Petition of appeal.

(n) Judicial Committee Rules, 1908, r 25, Statutory Rules and Orders, 1908, No. 1288, L 43, p 409, [1909] W N, Pt II, pp 50—58

*Ibid*, r 23

See p 35, note (t), *ante*

Judicial Committee Rules, 1908, r 24, *ubi supra*, p 410.

*Ibid*, r 26.

*Ibid*, s 27

See p 36, *ante*.

(a) Judicial Committee Rules, 1908 r 28

(b) In case of appeals from the courts mentioned in note (k), p 36, *ante*.

**SECT 3**  
**Practice and**  
**Procedure**

cases; where it arrives in England written, within one month from the date of the completion of the printing thereof. If there are special reasons the appellant may lodge his petition of appeal prior to the arrival of the record (c)

The petition of appeal (d) must recite succinctly, and, as far as possible, in chronological order, the principal steps in the proceedings from their commencement down to the admission of the appeal, but must not contain argumentative matter, or go into the merits of the case (e).

The appellant must, after lodging his petition of appeal, serve a copy thereof indorsed with the date of lodgment without delay on the respondent, as soon as the latter has entered an appearance (f)

**Setting down**     **66.** The petitioner must notify the registrar when a petition is ready for hearing, and the petition is thereupon deemed to be set down (g)

All petitions which have been set down are to be put in the paper, unless the Judicial Committee otherwise direct, on each day appointed for the hearing of petitions. Petitions, however, in the absence of special circumstances of urgency shown to the satisfaction of the registrar, are not to be put in the paper before the expiration of three clear days, if unopposed, or ten clear days, if opposed, from the lodging thereof, unless in the latter case the opponent consents to an earlier day not less than three clear days from the lodging (h).

**Summons to**  
**hearing**

**67** When the Judicial Committee have appointed a day for the hearing of a petition, the registrar is to notify all parties concerned by summons (i). If the prayer of a petition is consented to in writing by the opponent, or the petition is of a formal or non-contentious character, the Judicial Committee may, if they think fit, report to His Majesty, or make an order, as the case may be, without requiring the attendance of the parties, and in such case no summons is to be issued, but the registrar is to notify the parties of the making, date, and nature of the report or order (k)

**Withdrawal.**

**68** A petitioner who desires to withdraw his petition must give notice in writing to the registrar. Where the petition is opposed the opponent is, subject to any agreement between the parties, entitled to apply to the Judicial Committee for his costs, but where the petition is unopposed, or the parties have agreed as to the costs, the committee may dispose of the petition as a consent petition (l). An appeal once accepted can only be withdrawn by leave of the Judicial Committee obtained on petition (m)

(c) Judicial Committee Rules, 1908, r 29, Statutory Rules and Orders, 1908, No. 1288, L 43, p 411, [1909] W N, Pt II, pp. 50—58

(d) As to the form of the petition of appeal, see p 42, *post*

(e) Judicial Committee Rules, 1908, r 30, *ubi supra*, p 411

(f) *Ibid.*, r 31, *ubi supra*, p 411.

(g) *Ibid.*, r 53, p 416.

(h) *Ibid.*, r 54

(i) *Ibid.*, r. 55

(k) *Ibid.*, r. 56

(l) *Ibid.*, r. 57, p 417

(m) *Reed v. Sreenuttu Gourmonee Daber* (1857), 6 Moo Ind App 490

69. Where a petitioner unduly delays bringing his petition to a hearing, the registrar is to call upon him to explain the delay, and if no explanation, or one, in the opinion of the registrar, insufficient, is offered, the registrar is to treat the petition as set down, and, after notifying all parties by summons, to put it in the paper on the next day appointed for the hearing of petitions for such directions as the committee may think fit to give (*n*)

SMO. 2.  
Practice and  
Procedure.  
Delay.

Only one counsel is to be heard on each side on the hearing of a petition (*o*).

70. Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal of which the record has been registered in the registry of the Privy Council, any person claiming a right to appear at the hearing may lodge a caveat, and thereupon is entitled to receive from the registrar of the Privy Council notice of the lodging of the petition (if not lodged at the time of the caveat), and if and when the petition has been lodged to require the petitioner to serve him with a copy of the petition, and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith, after lodging his caveat, give notice thereof to the petitioner, if the petition has been lodged (*p*)

Caveat.

71. Copies of petitions relating to any appeals of which the record has been registered in the registry of the Privy Council are to be served on all parties who have entered an appearance. Any party so served is entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged in support of the petition (*q*)

Service of  
petition

72. A petition not relating to any appeal of which the record has been registered in the registry of the Privy Council, or which contains allegations of fact which cannot be verified by reference to the registered record, or any certificate, or duly authenticated statement of the court below, must be supported by an affidavit. Where the petitioner appears in person, this affidavit must be sworn by him, and state that to the best of his knowledge, information, and belief the allegations in the petition are true. Where the petitioner is represented by an agent, the affidavit must be sworn by the agent, and, besides stating that to the best of his knowledge, information, and belief the allegations in the petition are true, show how he obtained his instructions and information (*r*).

Affidavit in  
support.

73. A petition for an order of revivor or substitution must be accompanied by a certificate or duly authenticated statement from the court below, showing who, in the opinion of that court, is the proper person to be substituted, or entered, on the record in place of, or in addition to, the party who has died, or undergone a change of status (*s*).

Petition for  
revivor.

(*n*) Judicial Committee Rules, 1908, r. 58, Statutory Rules and Orders 1908, No. 1283, L. 43, p. 417, [1909] W. N., Pt. II, pp. 50—58

(*o*) *Ibid.* 59, p. 417. This refers to all petitions except petitions of appeal.  
(*p*) *Ibid.* 48, p. 415  
(*q*) *Ibid.* 49, p. 415  
(*r*) *Ibid.* 50, p. 418  
(*s*) *Ibid.* 51, p. 416

**§ 802 8** The registrar may, subject to appeal to the Judicial Committee,  
**Practice and** refuse a petition on the ground that it contains scandalous  
**Procedure** matter (a)

(iv) *Withdrawal or Non-Prosecution of Appeal.*

**Withdrawing  
 appeal**

**74** An appellant, who has not lodged his petition of appeal, may withdraw his appeal by giving notice in writing to the registrar of the Privy Council, who must with all convenient speed by letter notify the registrar of the court appealed from that the appeal has been withdrawn. The appeal stands dismissed as from the date of this letter (b).

When an appellant, who has lodged his petition of appeal, desires to withdraw his appeal, he must present a petition to that effect. On the hearing of this petition a respondent who has entered an appearance may (in the absence of any agreement between the parties) apply to the Judicial Committee for his costs. But when the respondent has not entered an appearance, or if he has entered an appearance but consents in writing to the prayer of the petition, the Judicial Committee may, if they think fit, dispose of it similarly to a consent petition, *mutatis mutandis* (c).

**Non prosecu-  
 tion of  
 appeal**

**75** Where an appellant takes no step in prosecution of his appeal, within four months in the case of appeals from certain courts (d), or within two months in other cases from the date of the arrival of the record in England, the registrar of the Privy Council must, with all convenient speed, notify by letter the registrar of the court appealed from that the appeal has not been prosecuted. The appeal stands dismissed for non-prosecution as from the date of this letter without further order (e).

Where an appellant who has entered an appearance fails to bespeak a copy, or part of a copy, of a written record as prescribed within the prescribed time (f), or having so bespoken a copy fails to take all further steps necessary to complete the printing of the record, or fails to lodge his petition of appeal within the prescribed period (g), the registrar of the Privy Council must call upon him to explain his default, and if no explanation is offered, or the explanation is, in the opinion of the registrar, insufficient, the registrar must, with all convenient speed, notify by letter the registrar of the court appealed from that the appeal has not been effectually prosecuted. The appeal stands dismissed for non-prosecution as from the date of this letter. The registrar must send a copy of this letter to all parties who have entered an appearance (h).

**Summons to  
 show cause**

**76.** Where an appellant, who has lodged his petition of appeal, fails to prosecute his appeal with due diligence, the registrar of the

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(a) Judicial Committee Rules, 1906, r. 52, Statutory Rules and Orders, 1908, No. 1288, L. 43, [1909] W. N., Pt. II, pp. 50-58.

(b) *Ibid.*, r. 32.

(c) Judicial Committee Rules, 1908, r. 33.

(d) In the case of the courts mentioned in note (k), p. 36, *ante*.

(e) Judicial Committee Rules, 1908, r. 34.

(f) See p. 36, *ante*.

(g) See p. 37, *ante*.

(h) Judicial Committee Rules, 1908, r. 35.

Privy Council must call upon him to explain his default, and if no explanation is offered, or the explanation is, in the opinion of the registrar, insufficient, the registrar must issue a summons calling on the appellant to show cause before the Judicial Committee, at a time named, why the appeal should not be dismissed for non-prosecution. No such summons can be issued before the expiration of one year from the date of the arrival of the record in England. If the respondent has entered an appearance, the registrar must send him a copy of the summons, and he may be heard at the hearing and ask for costs and other relief. The Judicial Committee may, after considering the matter, recommend His Majesty to dismiss the appeal for non-prosecution, or give such other directions as the justice of the case may require (*i*).

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77 An appellant whose appeal has been dismissed for non-prosecution may present a petition to His Majesty in Council praying that his appeal may be restored (*k*)

Restoration  
of appeal

(v) *Appearance by Respondent.*

78 The respondent may enter an appearance at any time after the arrival of the record and before the hearing of the appeal, but he must bear or be disallowed costs occasioned by any undue delay in entering his appearance, unless the Judicial Committee otherwise direct (*l*)

Appearance  
by respon-  
dent.

After entering an appearance the respondent must forthwith give notice thereof to the appellant if the latter has entered an appearance (*m*)

Where there are two or more respondents, and only one or more enter an appearance, the appearance form must set out the names of those who appear (*n*)

Two or more respondents may at their own risk as to costs enter separate appearances in the same appeal (*o*)

A respondent who has not entered an appearance is not entitled to receive any notice relating to the appeal from the registrar of the Privy Council, nor be allowed to lodge a case (*p*)

79 Subject to any special order of the Judicial Committee to the contrary, if a respondent, who was a respondent when the appeal was admitted, whether by order of the court below or by an Order in Council giving special leave to appeal, fails to enter an appearance, and it appears from the terms of the said order or Order in Council, or from the record, or from a certificate of the registrar of the court below, that the said non-appearing respondent has received notice, or is otherwise aware of the said order or Order in Council, and has also received notice or is otherwise aware of the despatch of the record to England, the appeal may be set down *ex parte*

Default of  
appearance.

(i) Judicial Committee Rules, 1908, r 36, Statutory Rules and Orders, 1908, p 412, No 1288, L 43, [1909] W. N., Pt. II, pp 50—58.

(k) *Ibid*, r 37, p 413.

(l) *Ibid*, r 38

(m) *Ibid*, r 39.

(n) *Ibid*, r 40

(o) *Ibid*, r 41

(p) *Ibid*, r 42.

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as against him, at any time after the expiration of three months after the petition of appeal has been lodged (q)

If the non-appearing respondent was made a respondent by Order in Council subsequently to the admission of the appeal, and it appears from the record, or supplementary record, or from a certificate of the registrar of the court below, that the non-appearing respondent has received notice or was otherwise aware of any intended application to bring him on the record as a respondent, the appeal may be set down *ex parte* as against him, at any time after the expiration of three months after service on him of the Order in Council bringing him on the record as a respondent (r)

If it is shown to the satisfaction of the Judicial Committee, by affidavit or otherwise, that the appellant has made every reasonable endeavour to serve a non-appearing respondent with the prescribed notices (s), and has failed to effect service, or that it is not the intention of the respondent to enter an appearance, the appeal may, without further order and at the risk of the appellant, be set down *ex parte* as against the non-appearing respondent (t)

**Defence in**  
**formd**  
**paupers.**

**80** A respondent who desires to defend an appeal *in formd paupers* may present a petition to that effect to His Majesty in Council, accompanied by an affidavit stating he is not worth £25 except his wearing apparel and his interest in the subject-matter of the appeal (a)

(vi) *Form of Documents.*

**Petitions**

**81** Petitions for orders and directions as to practice and procedure arising after the lodging of the petition of appeal, and not involving any change in the parties, are to be addressed to the Judicial Committee. All other petitions are to be addressed to His Majesty in Council, but a petition properly so addressed may include, as incidental to the relief sought, a prayer for orders or directions as to practice and procedure (b)

**Orders.**

Orders, which do not embody any special terms or include any special directions, need not be drawn up, unless the Judicial Committee so direct, but a note thereof is to be made by the registrar of the Privy Council (c)

**Form.**

Petitions must consist of consecutively numbered paragraphs, written, typewritten or lithographed on brief-paper with quarter margin and indorsed with the name of the court appealed from, the short title and Privy Council number of the appeal, or the short title of the petition (as the case may be) and the name and address of the London agent (if any) of the petitioner, but need not be signed. Petitions for special leave to appeal may be printed (in demy quarto or other convenient form) (d)

(q) Judicial Committee Rules, 1908, r 43 a, Statutory Rules and Orders, 1908, p. 413, No 1288, L-43, [1909] W. N., Pt II, pp 50-58

(r) *Ibid.*, r 43 b, p. 414

(s) That is, those mentioned in the two last preceding paragraphs.

(t) Judicial Committee Rules, 1908, r 43, *ubi supra*, p 413

*Ibid.*, r 44, p 414

*Ibid.*, r 45, p 414.

*Ibid.*, r 46 p 415

) *Ibid.*, r 47, p 415.



(vii.) *Lodging Cases.*

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Case to be  
lodged

82. No party to an appeal is entitled to be heard by the Judicial Committee unless he has previously lodged his case. A respondent, however, who is merely a stakeholder or trustee with no other interest in the appeal, may give notice in writing to the registrar of his intention not to lodge a case, reserving his right to address the committee on the question of costs (e).

The case may be printed either in England or abroad, but in either case must be printed in the prescribed manner (f), and shall be signed by at least one of the counsel who attends the hearing of the appeal, or by the party if he appears in person (g). Each party must lodge forty copies of his case (h).

83. The case must consist of paragraphs numbered consecutively, and state as concisely as possible the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case, and the reasons of appeal. References by page and line to the relevant portions of the record are to be, as far as practicable, printed in the margin, long extracts from the record must, as far as practicable, not be printed in the case. The taxing officer must, in taxing the costs, either of his own motion or at the instance of the opposite party inquire into any unnecessary prolixity in the case, and disallow the costs occasioned thereby (i).

Two or more respondents may, at their own risk as to costs, lodge separate cases (h).

Each party after lodging his case must forthwith give notice to the other party (l).

84. The party who lodges his case first may, at any time after the expiration of three clear days after notice of lodgment of his case, serve the other party (if he has not lodged his case) with a "case notice" requiring him to lodge his case within one month from service of the case notice, and informing him that in default the appeal will be set down for hearing *ex parte* against him. If the other party fails to comply with the case notice, the party who has lodged his case may, at any time after the expiration of the time limited by the case notice, lodge an affidavit of service (setting out the terms of the case notice), and the appeal, if all other conditions for being set down are satisfied, is to be set down *ex parte* as against the party in default. No case notice, however, may be served until after the completion of the printing of the record. The taxing officer in adjusting the costs of the appeal may inquire generally into the circumstances in which the case notice was served, and, if satisfied that there was no reasonable necessity for serving it, may disallow the costs of it to the party serving it. The

(e) Judicial Committee Rules, 1908, r. 60, Statutory Rules and Orders, 1908 p. 417, No 1288, L 43, [1909] W N, Pt II, pp 50—58.

(f) See note (i), p 35, *ante*.

(g) Judicial Committee Rules, 1908, r. 61, *ubi supra*, p 417.

(h) *Ibid.*, r 62.

(i) *Ibid.*, r 63.

(k) *Ibid.*, r 64, p 418.

(l) *Ibid.*, r 65.

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party in default is not precluded from lodging his case, at his own risk as regards costs and otherwise, at any time up to the date of hearing (*m*).

**Setting down.**

**85** Subject to the rules as to procedure on non-appearance of the respondent (*n*), and as to case notice, an appeal is to be set down *ipso facto* as soon as the cases on both sides are lodged, and the parties thereupon are to exchange cases by handing one another ten copies of their respective cases (*o*).

As soon as the appeal is set down the appellant must attend at the registry and obtain ten copies of the record and cases, and have them bound in the prescribed manner (*p*) for the use of the Judicial Committee. The several documents indicated by incuts are to be arranged in the following order: (1) appellant's case, (2) respondent's case, (3) record, (4) supplementary record, if any (*q*). The appellant must lodge the bound copies not less than four clear days before the commencement of the sittings at which the appeal is to be heard (*r*).

(viii) *The Hearing*

**Day of**  
**hearing**

**86** Where the Judicial Committee have appointed a day for the commencement of the sittings for the hearing of appeals, the registrar must, as far as in him lies, make the appointed day known to the agents of all parties concerned, and name a day on or before which appeals must be set down, if they are to be entered in the list of business for the sitting. All appeals set down on or before the day named are, subject to any directions from the committee or agreements between the parties, to be entered in such list of business, and, subject to directions from the committee, are to be heard in the order in which they are set down (*s*).

The registrar of the Privy Council, subject to the rule as to non-appearing respondents (*t*), is to notify the parties to each appeal by summons, at the earliest possible date, of the day appointed for the hearing of their appeal, and the parties must be in readiness on that day (*u*).

**The hearing**

**87** The hearing is at the bar of the Privy Council. The appellant's counsel begins and has a right of reply (*a*). Not more than two counsel will be heard on a side (*b*). Several parties

(*m*) Judicial Committee Rules, 1908, r 66, Statutory Rules and Orders, 1908, No 1288, L 43, p 418, [1909] W N, Pt. II, pp 50—58

(*n*) See p 42, *ante* (r 43)

(*o*) Judicial Committee Rules, 1908, r. 67, *ubi supra*, p 418.

(*p*) In cloth or half leather with paper sides, six leaves of blank paper are to be inserted before the appellant's case. The front cover must bear a printed label stating the title and Privy Council number of the Appeal, the contents of the volume, and the names and addresses of the London agents. The short title and Privy Council number of the appeal must be shown on the back.

(*q*) Judicial Committee Rules, 1908, r 68, *ubi supra*, p 419

(*r*) *Ibid.*, r 69

(*s*) *Ibid.*, r 70

(*t*) See p 41, *ante* (r 42)

(*u*) Judicial Committee Rules, 1908, r 71, *ubi supra*, p 419

(*a*) *Logan v Burslem* (1842), 4 Moo P C O 292

(*b*) See Judicial Committee Rules, 1908, r 71, and title BARRISTERS, Vol. II., p 417.

in an appeal who are in different interests are heard by separate counsel, but if the interests are the same they must be heard by the same counsel (c) Persons interested may intervene (d), but not when an appeal is part heard (e). SMO. 8  
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Where legal points of importance arise, especially if the committee who heard the appeal disagree or entertain doubts, the committee will hear and, if necessary, direct further argument, in which case one counsel will be heard on each side (f) Re-argument may also be necessary in case of the death before judgment of one of the judges who heard the appeal (g).

88 The committee are very unwilling to entertain any point not duly raised and considered in the court below (h), but when a question is raised for the first time on the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent, but expedient, in the interests of justice to entertain the plea (i) And if the point is patent on the face of the record, the court will deal with it although it was not taken in the court below (k). New points

89. The committee have power to take evidence (l), such evidence is usually by affidavit, and is admitted on applications for leave to appeal, and where the evidence was not and could not be before the court below, *as, e g*, when the question is as to circumstances under which the court below dealt with a legal practitioner under its disciplinary powers (m). Evidence

90 The committee have also power to refer any matters to be examined and reported on to the registrar, or to such other person or persons as shall be appointed by His Majesty in Council or by the Judicial Committee, in the same manner as matters are referred in the Chancery Division to a master (n). References

91 The judgment of the committee is in the form of a report to His Majesty, advising him as to the appeal. Only one judgment is given, this is delivered in open court, and contains the reasons for the report the committee will present to His Majesty (o) When the committee have reported, the report is submitted to His Majesty Judgment

(c) *Re Downie and Arrindell* (1841), 3 Moo P C C 414, 419, *Jewa-Jee v Trimbuk-Jee* (1842), 3 Moo Ind App 138

(d) *Maharajah Ishuree Persad Narain Sing v Lal Chutterput Sing* (1842), 3 Moo Ind. App 100, 109, *East India Co v. Robertson* (1859), 7 Moo. Ind App 361

(e) *La Banque d'Hochelaga v. Murray* (1890), 15 App Cas 414, 419, P O

(f) *Ruckmaboy v Lulloobhoy Motichund* (1852), 8 Moo P C O. 4, at p 11

(g) This was the case in *Falkingham v Victorian Railways Commissioner*, see [1900] W N, Pt. II, p 55

(h) *Grey v. Manitoba and North Western Rail. Co. of Canada*, [1897] A U. 254, P O.

(i) *Connecticut Fire Insurance Co v Kavanagh*, [1892] A C 473, 480

(k) *Dennis v Holloway* (1861), 14 Moo P C O 290, 298

(l) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), ss 7, 8

(m) *Smith v Sierra Leone Justice* (1841), 3 Moo P C C 361, 365

(n) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s 17

(o) *Ibid*, s 3

**SECT 3** at the next Council, and when approved is embodied in an Order.  
**Practice and Procedure** in Council and then becomes the final decree (*p*)  
 The costs of appeals are in the discretion of the committee (*a*).

**Reserved judgment**

**92** Where the Judicial Committee after hearing an appeal reserve their judgment thereon, the registrar must, in due course, notify the parties who attended the hearing of the appeal by summons of the day appointed for the delivery of the judgment (*b*).

(ix) *Costs*

**Taxation of costs**

**93** All bills of costs are to be referred to the registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation. A scale of fees is prescribed by which such taxations are regulated (*c*). Only costs incurred in England are to be taxed in England (*d*).

The registrar must, with all convenient speed after the Judicial Committee have given their decision as to the costs of any matter, issue to the party to whom costs have been awarded an order to tax, and notice of the day and hour appointed by him for taxation. This party must, not less than forty-eight hours before the time appointed for taxation, lodge his bill of costs (with all necessary vouchers) and serve the opposite party with a copy of his bill of costs and of the order to tax and notice (*e*).

If a party fails to lodge his bill of costs and vouchers within the prescribed time, or otherwise delays or impedes the taxation, the taxing officer may, if he thinks fit, disallow his charges for drawing his bill of costs and attending the taxation (*f*).

**Appeal.**

Any party aggrieved by a taxation may appeal by way of motion to the Judicial Committee. Three clear days' notice of the motion must be given to the opposite party, and a copy of the notice is to be left in the registry of the Privy Council (*g*).

The amount allowed on taxation is, subject to appeal to the Judicial Committee and to any direction from them to the contrary, to be inserted in the Order in Council determining the matter (*h*).

**Pauper scale.**

Where costs are directed to be taxed on the pauper scale, no fees to counsel are to be allowed, and agents are only to be awarded out-of-pocket expenses to cover office expenses, taken at about three-eighths of the usual professional charges in such matters (*i*).

**Security.**

When an appellant has lodged security for the respondent's costs, the registrar is to deal with such security in accordance with the

(*p*) *Potts v Lafontaine* (1880), 6 App Cas 483

(*a*) Judicial Committee Act, 1833 (3 & 4 Will 4, c 41), s 15, Order in Council, 13th June, 1853, art 1. Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 1

(*b*) Judicial Committee Rules, 1908, Statutory Rules and Orders, 1908, No 1288, L 43, p 420, [1909] W N, Pt II, pp 50-58, r 74

(*c*) *Ibid* r 75. The scale of fees is prescribed by schedule O to the Rules.

(*d*) Judicial Committee Rules, 1908, r 76, *ubi supra*, p 420

(*e*) *Ibid.*, r 77

(*f*) *Ibid.*, r 78

(*g*) *Ibid.*, r 79. As to appeals involving costs only, see title DEPENDENCIES

AND COLONIES

(*h*) *Ibid.*, r 80

(*i*) *Ibid.*, r. 81, p. 421

directions contained in the Order in Council determining the appeal (k).

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(x.) *Miscellaneous*

**94** The Judicial Committee have power to excuse the parties from compliance with the prescribed rules, and may give such directions as to practice and procedure as they consider just and expedient. Applications to be excused from compliance with any rules are to be addressed to the registrar of the Privy Council, who is to take the instructions of the Judicial Committee thereon, and communicate them to the parties. If the registrar thinks it desirable, or either of the parties so requests in writing, the application will be dealt with in open court. In such a case the application is to be put in the paper for hearing on a day appointed by the committee, and notice is to be given to the parties interested of the time appointed (l).

Special  
directions.

**95** Any document lodged in connection with any matter pending may be amended by leave of the registrar of the Privy Council. If the registrar is of opinion, or either of the parties requests in writing, that the application may be dealt with in open court, the application will be so dealt with. In such a case the application is to be put in the paper for hearing on a day appointed by the Judicial Committee, and notice is to be given to the parties interested of the time appointed (m).

Amending  
documents

**96** Affidavits relating to any matter pending before His Majesty in Council or the Judicial Committee may be sworn before the registrar of the Privy Council (n). Where a party changes his agent, such party or the new agent must forthwith give notice to the registrar in writing of the change (o).

Affidavits

**97.** Proctors, solicitors, and agents admitted to practice before the Judicial Committee must sign a declaration in the prescribed form engaging to observe and obey the Rules, Regulations, Orders, and Practice of the Privy Council, and to pay and discharge, on demand, all fees and charges due and payable upon any matter pending before His Majesty in Council (p).

Solicitors.

Proctors and solicitors practising in London are allowed to sign the declaration and practice before the Privy Council on production of their certificates without payment of any fees (q).

Solicitors not practising in London, but admitted by the High Courts in England or Ireland, by the Court of Session in Scotland, or by the High Courts in any of His Majesty's dominions, may apply, by petition to the Privy Council, for leave to practise before the Judicial Committee, and may be admitted to practice by an Order

(k) Judicial Committee Rules, 1908, r. 82, Statutory Rules and Orders, 1908, p. 421, No. 1288, L. 43

(l) *Ibid.*, r. 83

(m) *Ibid.*, r. 84.

(n) *Ibid.*, r. 85.

(o) *Ibid.*, r. 86

(p) Order in Council of 6th March, 1896, r. 1, Statutory Rules and Orders Revised, Vol. VI, Judicial Committee, p. 13. The form of declaration is contained in the Order in Council

(q) Order in Council of 6th March, 1896, r. 2, *ubi supra*, p. 14

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of Council (a) for such period and under such conditions as the Privy Council may direct (b).

Any proctor, solicitor, agent, or other person practising before the Privy Council who wilfully acts in violation of the rules and practice of the Privy Council or of the prescribed rules, or who misconducts himself in prosecuting proceedings before the committee, or refuses or omits to pay, on demand, the Council office fees and charges payable by him, is liable to an absolute or temporary prohibition to practise before the Judicial Committee upon cause shown at the bar of the committee (c).

**Death of**  
**party.**

**98** In the case of the death or change of status of either of the parties, or a transmission of their interest, the suit abates, and an order of revivor must be obtained on petition. In the case of joint appellants the appeal does not abate by reason of the death of one of them (d). If a sole respondent dies the appellant must apply for an order of revivor against the personal representatives of the deceased (e).

**SUB-SECT 2 — Ecclesiastical and Maritime Appeals**

**Practice.**

**99** The practice and procedure of the Judicial Committee in ecclesiastical, vice admiralty, and prize cases is regulated by an Order in Council of 11th December, 1865, in that behalf (f), and by an Order in Council of 21st December, 1908, making rules for and establishing a scale of fees to be allowed on taxation in appeals (g).

The petition must be left in the office in duplicate with an office copy of the decree or order appealed against (h).

When the appeal has been referred to the Judicial Committee, the inhibition and citation and monition for process are issued by the registrar (i). If the inhibition, citation, and monition is not taken out within one month from the date of the petition being referred to the Judicial Committee, the appeal stands dismissed (k). The inhibition, citation, and monition must be returned duly served on the registrar of the court below and the opposite

(a) An Order of Council is an order made by the Privy Council itself, and not by His Majesty with the advice of the Privy Council.

(b) Order in Council of 6th March, 1896, Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 14, r 3.

(c) *Ibid.*, r 4.

(d) *Rule (Marchioness) v Mason* (1849), 7 Moo P C O 1.

(e) *Gubind Chunder Sen v Ryan* (1861), 15 Moo. P C O 247.

(f) Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 98.

(g) Judicial Committee Rules, 1908. These rules are directed (r 87) to apply to all matters falling within the appellate jurisdiction of the Judicial Committee subject to the provisions of any statute or statutory rule or order to the contrary.

(h) Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 98, r 3. Appeals are either *apud acta* (where the appellant gives notice to the registrar of the court below that he appeals, and the registrar enters the appeal in the minute book of his court) or *in scriptis* (where there is an instrument of appeal in writing (on a shilling stamp), attested by a notary public and two witnesses).

(i) *Ibid.*, r. 4.

(k) *Ibid.*, r. 6.

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party, together with the process (*l*), within one month from issue in the case of a court within the United Kingdom, and four months in the case of a court without the United Kingdom. In default the appeal stands dismissed (*m*). The respondent may enter appearance at any time after the appeal is referred to the committee (*n*). If the respondent desires to adhere (*o*) to the appeal, he must within one month of appearance lodge declaration of adherence stating from what part of the decree of the court below he desires to appeal (*p*). The appellant must bring in sixty printed copies of the appendix (*q*) within one month of the process being brought in and deliver forty copies to the respondent (*r*). Both parties are to bring in sixty printed copies of their respective cases within one month of the appendix being brought in and deliver forty copies to the opposite party (*s*). The case then stands for hearing (*t*). The appellant may abandon his appeal by filing a proxy stating that he abandons the appeal and consents to be condemned in costs (*u*).

**100** An appellant residing out of the United Kingdom must, within two months after service of a notice on his solicitor to that effect, give security in £200 (*x*). If an appeal stands dismissed under the rules, a motion may be made within a fortnight to reinstate it. An order to reinstate may be made subject to an order as to the costs or otherwise (*y*). Security for costs

**101** Pleadings and references to the registrar, or to the registrar and merchants, are regulated, as far as they are applicable by the Rules of the Probate, Divorce and Admiralty Division (Admiralty) for the time being (*a*). Pleadings

In the case of appeals under the Clergy Discipline Act, 1892 (*b*), it is not necessary to lodge any written statement or printed copies of the case with reference to which the appeal is brought (*c*).

**102** On the hearing of ecclesiastical appeals provision is made for the attendance of the archbishops and bishops as assessors according to a rota (*d*). Assessors.

(*l*) Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 98,  
r 6 The process is the whole of the proceedings and proofs in the court below  
(*m*) Order in Council of 11th December, 1865, r 7

(*n*) *Ibid*, r 8

(*o*) That is, to appeal against any part of the order of the court below which is prejudicial to him.

(*p*) *Ibid*, r 9

(*q*) That is, the record

(*r*) *Ibid*, rr 10, 28

(*s*) *Ibid*, rr 12, 13, 28.

(*t*) *Ibid*., r 14.

(*u*) *Ibid*, r 17

(*x*) *Ibid*, r 15.

(*y*) *Ibid*, r 20

(*a*) *Ibid*., rr 24, 25 See title ADMIRALTY, Vol I, p 117

(*b*) 55 & 56 Vict c 32

(*c*) Clergy Discipline Rules, 1892, r 74 (Statutory Rules and Orders Revised, Vol IV., Ecclesiastical Court, England, p 61)

(*d*) Order in Council, 28th November, 1876, Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 114.

**SECT 3**  
**Practice and Procedure** On the hearing of Admiralty appeals the Judicial Committee may, if they think fit, require the attendance of two nautical assessors (*e*)  
 The procedure in relation to hearing and judgment is as in the case of ordinary appeals (*f*)

**Admiralty appeals** **103** Appeals from the Admiralty Court of the Cinque Ports, Colonial Courts of Admiralty, and Vice-Admiralty Courts are regulated by rules made on the 23rd August, 1883 (*g*), except in the case of Indian Vice-Admiralty Courts, for which rules were made under the Vice-Admiralty Courts Act, 1832 (*h*), on the 27th June, 1832 (*i*)

**Colonial appeals.** Separate rules of procedure have been approved by Order in Council for several colonial Courts of Admiralty (*k*), which possibly may supersede the rules of 1883, and in case of Indian courts those of 1832

These appeals are regulated so far as regards the Prize Courts of first instance by an Order in Council of the 18th July, 1898 (*l*), while the practice before the Judicial Committee is regulated by rules dated the 11th December, 1865 (*m*)

**Rules** **104** The proceedings in appeals, so far as the courts below are concerned, are regulated by the rules of those courts. Before the Judicial Committee procedure on appeals is governed by the Order in Council of 11th December, 1865 (*n*), and fees by the Order in Council of 21st December, 1908 (*o*). Appeals under the Clergy Discipline Act, 1892 (*p*), are regulated by the rules made by virtue of the Act, both in the court below and before the Judicial Committee (*q*)

#### SECT 4 —Officers

**Officers** **105** The officers of the Judicial Committee of the Privy Council are a registrar and a deputy registrar (*r*). The registrar is appointed

(*e*) Judicial Committee Rules, 1908, 1 73, Statutory Rules and Orders, 1908, No 1288 L 43, [1909] W N, Pt II, pp 50-58

(*f*) See p 33, *ante*

(*g*) Statutory Rules and Orders Revised, Vol II, Colonial Courts of Admiralty, p 1. Rr 120-155 deal with appeals. These rules were made under Vice-Admiralty Courts Act, 1863 (26 & 27 Vict c 24), s 14

(*h*) 2 & 3 Will 4, c 51

(*i*) Rr 30 of these rules deals with appeals. It is printed in Safford and Wheeler's Privy Council Practice, p 90b

(*k*) Namely, in the case of the following courts: Aden, Resident's Court, Bombay, High Court, Canada, Exchequer Court, Cyprus, Supreme Court, Fiji, Supreme Court, Gibraltar, Supreme Court, Jamaica, Supreme Court, Queensland, Supreme Court, Sind, Sadar Court, Straits Settlements Court. See Statutory Rules and Orders Revised, Vol II, Colonial Court of Admiralty and Vice-Admiralty Court, p 1

(*l*) Statutory Rules and Orders Revised, Vol IX, Navy, p 270. Rr 229-234, at pp 316, 317, relate to appeals

(*m*) Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 98

(*n*) Statutory Rules and Orders Revised, Vol VI, Judicial Committee, p 98

(*o*) Statutory Rules and Orders, 1908, No 1288, L 43, [1909] W N, Pt II, pp 50-58

(*p*) 55 & 56 Vict c 32

(*q*) Statutory Rules and Orders Revised, Vol IV, Ecclesiastical Court, England, pp 61-109

(*r*) By Order in Council of 23rd June, 1904 ([1904] W N, Pt II, p. 231),



under the sign manual(s). In the absence of the registrar the Lord President has power to appoint a deputy (t). The duties of the registrar are to be defined in his appointment (u). The registrar has power to examine witnesses and take affidavits and depositions on oath (x).

The Judicial Committee are empowered to appoint such officer or officers as may be necessary to execute processes (y).

## Part V.—The Supreme Court of Judicature.

### SECT. 1.—*Constitution.*

**106** The Supreme Court of Judicature was constituted in 1873 (a) as from 2nd November, 1874 (b), and in it there were consolidated the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy (c). In the next year, 1874, however, the constitution of the court was postponed until 1st November, 1875 (d). Before this deferred constitution the London Court of Bankruptcy was severed from the Supreme Court (e), but was again consolidated with that court as from and after 31st December, 1883 (f). The Supreme Court is regulated by the Judicature Acts, 1873 to 1902 (g), and consists of two permanent divisions (h). His Majesty's High Court of Justice and His Majesty's Court of Appeal (i).

Constitution  
of the  
Supreme  
Court.

it was directed that the duties of the registrar of His Majesty in admiralty and ecclesiastical causes shall be discharged by the registrar of the Privy Council for the time being

(a) Judicial Committee Act, 1833 (3 & 4 Will 4, c 41), s 18

(b) Privy Council Registrar Act, 1853 (16 & 17 Vict c 85), s 2

*Ibid*

*Ibid*, s 1

Judicial Committee Act, 1843 (6 & 7 Vict c 38), s 15.

Judicature Act, 1873 (36 & 37 Vict c 66)

*Ibid*, s 2

*Ibid*, s 3

(c) Judicature (Commencement) Act, 1874 (37 & 38 Vict c 83), s 2

(d) Judicature Act, 1875 (38 & 39 Vict c 77), s 9

(f) Bankruptcy Act, 1883 (46 & 47 Vict c 52), ss 3, 93

(g) (1873) 36 & 37 Vict c 66, (1875) 38 & 39 Vict c 77, (1876) 39 & 40 Vict c 59, (1877) 40 & 41 Vict c 9, (1879) 42 & 43 Vict c 78, (1881) 44 & 45 Vict c 68, (1884) 47 & 48 Vict c 61, (1887) 50 & 51 Vict c 70, (1890) 53 & 54 Vict c 44, (1891, London Causes) 54 & 55 Vict c 14, (1891) 54 & 55 Vict c 63, (1894) 57 & 58 Vict c 16, (1899) 62 & 63 Vict c 6, (1902) 2 Edw 7, c 31.

(h) It must be noted that the term "division" is here used in a sense differing from that in which the term is used in reference to the constitution of the "divisions" of the High Court, and the sitting of the Court of Appeal in "divisions."

(i) Judicature Act, 1873 (36 & 37 Vict c 66), s 4.

## SECT. 2.

His  
Majesty's  
High Court  
of JusticeJurisdiction  
of the High  
Court of  
Justice.SECT. 2 — *His Majesty's High Court of Justice.*SUB-SECT. 1 — *Jurisdiction*(1) *In General*

107 To the High Court of Justice were transferred the jurisdiction possessed by the High Court of Chancery (*k*) (including its common law jurisdiction), the Court of Queen's Bench (*l*), the

(*k*) The old Court of Chancery consisted of two separate tribunals—an ordinary court of common law and a court of equity. Of these the court of common law was the most ancient, and had jurisdiction in personal actions where a minister or officer of the court was concerned, in *scire facias* to cancel patents, or to partition lands held in coparceny, and in other matters. From this court issued out commissions of bankruptcy, lunacy, relating to charities, etc. "Chancery (*Cancellaria*) is the Highest Court of Judicature in this Kingdom, next to the Parliament, and of very ancient Institution. The Extraordinary Court or Court of Equity, proceeds by the Rules of Equity and Conscience, and moderates the Rigour of the Common Law, considering the intention rather than the words of the Law. It gives relief for and against Infants, notwithstanding their Minority. And for and against married Women, notwithstanding their Coverture. All Frauds and Deceits, for which there is no Redress at Common Law; all Breach of Trust and Confidences, and Accidents, as to relieve Obligors, Mortgagees, &c., against Penalties and Forfeitures, where the Intent was to pay the Debt, are here remedied. Also this Court will give relief against the Extremity of unreasonable Engagements, entered into without Consideration, oblige Creditors that are unreasonable to compound with an unfortunate Debtor and make Executors &c., give security and pay interest for Money that is to Tie long in their hands (*Anon* (1679) 2 Vent 346). Here Executors may sue one another, or one Executor alone be sued without the rest. Order may be made for Performance of a Will. It may be decreed who shall have the Tutelage of a Child. This Court may confirm Title to Lands, though one has lost his Writings. Render Conveyances defective through Mistake &c., good and perfect, but not Defects in a voluntary Conveyance, unless where intended as a Provision for younger Children (*Bonham v Newcomb* (1684) 2 Vent 363). In Chancery Copyholders may be relieved against the ill-Usage of their Lords. Inclosures of Lands that are Common be decreed, and this Court may decree Money or Lands given to charitable uses, Things in Action, upon Assignment on consideration. Oblige men to account with each other. Avoid the Bar of Actions, by the Statute of Limitations, &c., for Debts thus barred, are still Debts in Equity and the Duty remains (*Anon* (1707) 1 Salk 184). But in all cases, where the Plaintiff can have his Remedy at Law, he ought not to be relieved in Chancery and a thing which may be tried by a Jury is not triable in this Court." (Jacob's Law Dictionary, *sub voce* Chancery)

(*l*) The jurisdiction of this court was civil and criminal. The civil jurisdiction was on what was called the plea side of the court. The civil jurisdiction, at first more limited, had become extended to all actions between subject and subject, except where the revenue of the Crown was affected, or where the title to realty was in question. On the plea side the court also exercised appellate jurisdiction from the palatinate courts, inferior courts of record, and from the Inclosure Commissioners (Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 4). The criminal jurisdiction, on the Crown side, extended to all offences of whatever nature, to articles of the peace, and to *habeas corpus*, also to *certiorari*, *mandamus*, and *quo warranto*. "King's Bench is the Court or Judgment Seat where the King of England was sometimes wont to sit in his own person, and was therefore moveable with the Court or King's Household, and called *Curia Domini Regis* or *Aula Regis*" and by Statute 28 Ed. 1, c. 5 this court is to follow the King. King Henry III. several times sat in person with the Judges in *Banco Regis*, being seated on a High Bench, and the Judges at a lower one at his feet. And the King's Bench was originally the only Court in Westminster Hall; out of which the Courts of Common Pleas and Exchequer seem to have been derived. This Court is the *Custos morum* of all the subjects of the realm, and where it meets

SECT. 2  
His  
Majesty's  
High Court  
of Justice.

Court of Common Pleas (*m*) at Westminster, the Court of Exchequer (*n*) (including its jurisdiction as a court of revenue), the High Court of Admiralty (*o*), the Court of Probate (*p*), the Court for Divorce and Matrimonial Causes (*q*), the London Court of Bankruptcy (*r*), the Court of Common Pleas at Lancaster (*s*), the

with any offence contrary to the first principles of common Justice, may inflict a suitable punishment 2 Hawk. P. C. 6, c. 3" (Jacob's Law Dictionary, *sub voce* King's Bench)

(*m*) "Gwyn in the Preface of his Reading, says that till Henry III granted the great Charter, there were but two Courts, called the King's Courts, viz, the King's Bench and the Exchequer and that upon the Grant of that Charter, the Court of Common Pleas was erected and settled in one certain Place, viz, Westminster Hall But Sir Edward Coke is of Opinion in his preface to the eighth Report, that the Court of Common Pleas was constituted before the Conquest, and was not created by Magna Charta, at which time there were *justiciarii de Banco, &c.* The jurisdiction of this Court is general and extends itself throughout England It holds pleas of all Civil Causes at Common Law, between subject and subject, in actions real personal and mixed" (see title ACTION, Vol I, pp 31 *et seq*), "and it seems to have been the only Court for real causes In personal and mixed actions it hath a concurrent jurisdiction with the King's Bench But hath no cognizance of Pleas of the Crown, and Common Pleas are all that are not such" (Jacob's Law Dictionary, *sub voce* Common Pleas) It was the court of appeal from revising barristers (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict c 18), s 60) It had also jurisdiction under the Fines and Recoveries Act, 1833 (3 & 4 Will 4, c. 74), ss 81, 83, the Railway and Canal Traffic Act, 1854 (17 & 18 Vict c 31), ss 3, 4, 5, and as to election petitions under the Parliamentary Elections Act, 1868 (31 & 32 Vict c 120), s 7

(*n*) This court had exclusive jurisdiction in matters affecting the revenue of the Crown "Exchequer (M E Eschequer, a O F Eschequer a chess-board) The name originally referred to the table covered with a cloth divided into squares, on which the accounts of the Revenue were kept by means of counters 3 (more fully Court of Exchequer, Exchequer of Pleas) a court of law, historically representing the Anglo-Norman exchequer in its judicial capacity The jurisdiction of the Court was theoretically confined to matters of revenue, but in practice was gradually extended to all kinds of cases (except 'real actions') by means of the legal fiction that the wrong suffered by the plaintiff had rendered him unable to pay his debts to the King" (New English Dictionary, Vol III, E, p 378) Up to 1842 it had also an equity side, but this was transferred to the High Court of Chancery by the Court of Chancery Act, 1841 (5 Vict c 5), s 1

(*o*) The High Court of Admiralty (constituted a court of record by the Admiralty Court Act, 1861 (24 & 25 Vict c 10), s 14), had at the date of the Judicature Act lost its criminal jurisdiction except under the Foreign Enlistment Act, 1870 (33 & 34 Vict c 90) Its civil jurisdiction extended to all maritime actions, whether *in rem* or *in personam*, and was equitable as well as legal, and appellate as well as original This court had also jurisdiction as a prize court (Naval Prize Act, 1864 (27 & 28 Vict c. 25))

(*p*) The Court of Probate was established as a court of record by the Court of Probate Act, 1857 (20 & 21 Vict c 77), and had jurisdiction to grant and revoke probates and letters of administration and to decide all questions in matters testamentary

(*q*) This court was established as a court of record by the Matrimonial Causes Act, 1857 (20 & 21 Vict c. 85), with exclusive jurisdiction in all causes, suits, and matters matrimonial

(*r*) This court was established as a principal court of record by the Bankruptcy Act, 1869 (32 & 33 Vict c 71) It was a court of equity as well as of law, and the chief judge possessed all the jurisdiction of a judge of one of the superior courts of common law, and of a judge of the High Court of Chancery, in addition to his special jurisdiction in bankruptcy. See p. 56, *post*

(*s*) The Court of Common Pleas at Lancaster had within the county palatine a concurrent jurisdiction with the courts of common law in personal actions and in ejectment

## SECT 2

His  
Majesty's  
High Court  
of JusticeOriginal  
jurisdiction

Court of Pleas at Durham (a), and the courts created by commissions of assize, of oyer and terminer, and of gaol delivery (b)

(u.) *Original Jurisdiction.*

**108** The jurisdiction of the High Court is both original and appellate. The original jurisdiction is general, and extends to all causes of action and is unlimited in amount (c). It includes the whole of the original jurisdiction of the courts before mentioned, except the jurisdiction in lunacy of the Lord Chancellor or the Lords Justices of Appeal in Chancery (d), the jurisdiction of the Lord Chancellor as to patents (e) and commissions, or as the visitor of any college or foundation, and that of the Master of the Rolls as to records (f). The court has also jurisdiction to grant a mandamus or an injunction or to appoint a receiver by an interlocutory order (g). The effect of the Judicature Acts, and the rules made under them, is not (except as expressed) to alter the jurisdiction of the High Court as transferred thereto by the Act of 1873 (h).

The civil jurisdiction of the High Court includes all causes and matters whatever, except prize causes (i), certain excepted lunacy matters (j), and actions within a franchise of cognisance of pleas, but only where the lord of the franchise claims his right (k).

The court also exercises the functions of the King as visitor of all civil corporations, and thus has jurisdiction to relieve any freeman in city, borough, or town corporate, who is unjustly disfranchised (l).

The jurisdiction of the Probate, Divorce, and Admiralty Division in admiralty, matrimonial and succession matters is dealt with elsewhere (m).

The trial of parliamentary election petitions is conducted before two judges of the King's Bench Division selected from a rota appointed annually (n). The court has also jurisdiction as to municipal election petitions (o).

Divisional  
courts

**109** Divisional courts have original jurisdiction in cases of *habeas corpus*, where the judge directs the rule nisi or the writ to be

(a) This court had similar jurisdiction within the county palatine of Durham as the last-mentioned court had in Lancaster.

(b) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16.

(c) As to remission to the county court of actions commenced in the High Court see titles COUNTY COURTS, Vol. VIII, p. 438, PRACTICE AND PROCEDURE.

(d) See p. 94, *post*.

(e) See title PATENTS AND INVENTIONS.

(f) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 17.

(g) *Ibid.*, s. 25 (8).

(h) *British South Africa Co. v. Companhia de Moçambique*, [1893] A.C. 602.

(i) See p. 28, *ante*, and title PRIZE LAW AND JURISDICTION.

(j) See p. 94, *post*.

(k) *Neal v. Deacon* (1663), 1 Lev. 89.

(l) 4 Co. Inst. 71.

(m) See pp. 59, 62, *post*, and titles ADMIRALTY, Vol. I, p. 63, CONFLICT OF LAWS, Vol. VI, pp. 218, 262, HUSBAND AND WIFE.

(n) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), Parliamentary and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 13.

(o) See title ELECTIONS.

returnable there, in special cases under the London Government Act, 1899 (*p*), and in applications to strike solicitors off the rolls (*q*).

SECT. 2.

His  
Majesty's  
High Court  
of Justice.

Criminal  
jurisdiction

**110.** The original criminal jurisdiction of the High Court extends over all indictable offences against the law of England, and is exercised either in the King's Bench Division or under the commissions of oyer and terminer and gaol delivery (*r*) on circuit, at the Central Criminal Court (*s*), or directed to special commissioners (*t*).

In the case of criminal informations (*u*), whether by the Attorney-General *ex-officio* or on relation, or to enforce a pecuniary penalty in which the informer as well as the Crown has an interest, the criminal jurisdiction of the High Court is only exercised in the King's Bench Division

Where on application an indictment has been removed into the King's Bench Division for trial (*v*), or where an indictment is found by the grand jury in the King's Bench Division (*x*), the King's Bench Division has exclusive jurisdiction to try the cause

The trial in the King's Bench Division is held before one judge, unless on motion an order has been made by the court that the trial shall be at bar (*a*).

**111** Offences by Colonial Governors (*b*) and other public officers abroad (*c*) are triable in the King's Bench Division, either on information exhibited by the Attorney-General or upon indictment found in the division, as are also offences committed by the Governor-General of India, Lieutenant-Governors, Justices of the High Courts, and other public officers in India. Extortion and other misdemeanours committed by public officers in India are also triable in the King's Bench Division (*d*), if the Attorney-General or the other prosecutors elect to proceed therein instead of claiming a trial before the special commission which has jurisdiction in such cases (*e*)

(Offences by  
public officers  
abroad.

(*p*) 62 & 63 Vict c 14 For *habeas corpus* and other matters in which there is original jurisdiction, see title CROWN PRACTICE

(*q*) R S C, Ord 59, rr 1, 2 See title SOLICITORS

(*r*) See p 87, *post*

(*s*) The Central Criminal Court is a branch of the High Court of Justice (Judicature Act, 1873 (36 & 37 Vict c 66), ss 16, 29, *R v Parke*, [1903] 2 K B 432, 139, see p 87, *post*)

(*t*) See p 90, *post*

(*u*) See title CRIMINAL LAW AND PROCEDURE, p 292, *post*

(*v*) Crown Office Rules, 1906, rr 12—19, Statutory Rules and Orders, 1906, pp 606—608

(*x*) Middlesex Grand Jurors Act, 1872 (35 & 36 Vict c 52), Local Government Act, 1888 (51 & 52 Vict c 41), s 89 (2) (3), Crown Office Rules, 1906, rr 32—34, Statutory Rules and Orders, 1906, pp 610—612

(*a*) Crown Office Rules, 1906, rr 150—155, Statutory Rules and Orders, 1906, p 627

(*b*) 11 Will 3, c 12 (11 & 12 Will 3, in Ruffhead)

(*c*) Criminal Jurisdiction Act, 1802 (42 Geo 3, c 85)

(*d*) East India Company Act, 1770 (10 Geo 3, c 47), s 4, East India Company Act, 1773, (13 Geo. 3, c 63), ss 33, 39—41; East India Company Act, 1780 (21 Geo 3, c 70), ss 4—7, East India Company Act, 1793 (33 Geo 3, c 52), ss 140, 141, East India Company Act, 1797 (37 Geo. 3, c 142), s 14

(*e*) East India Company Act, 1784 (24 Geo 3, sess 2, c 25), East India Company Act, 1786 (26 Geo 3, c 57), s 25.

SECT. 2.

His  
Majesty's  
High Court  
of Justice.Offences  
overseas.

**112** The King's Bench Division has also jurisdiction to try persons accused of wilfully neglecting or delaying to deliver parliamentary writs (*f*)

**113** The criminal jurisdiction of the High Court also extends over offences committed within the jurisdiction of the Admiralty of England (*g*), and can be exercised either at the Central Criminal Court (*h*) or under commissions of oyer and terminer and gaol delivery (*i*).

Bankruptcy

**114** In Bankruptcy the jurisdiction of the High Court is both original and appellate. The original jurisdiction extends to those cases in which it is proposed to present a petition against a debtor who has resided or carried on business within the London bankruptcy district, *i.e.*, the City of London and the districts of the Metropolitan County Courts (*k*), for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any county court, or who is not resident in England, or whose residence the petitioning creditor is unable to ascertain (*l*).

An appeal lies in bankruptcy matters, at the instance of any person aggrieved, from the order of a county court to a divisional court of the High Court of Justice, of which the judge to whom bankruptcy business is for the time being assigned is to be a member. The decision of such divisional court is final and conclusive, unless the divisional court or the Court of Appeal give special leave to appeal to the Court of Appeal, whose decision in such a case is final and conclusive (*m*).

Winding up

**115** In company winding-up matters, the High Court has also original and appellate jurisdiction. The original jurisdiction applies to cases where the amount of the share capital of the company paid up or credited as paid up exceeds £10,000, except that in cases where the registered office of the company is situated within the jurisdiction of either of the Chancery courts of the counties palatine of Lancaster or Durham such Chancery court has concurrent jurisdiction (*n*), and except in cases of companies formed for working mines within the stannaries, which are not shown to be actually working mines nor to be engaged in any other undertaking beyond those limits (*o*).

(*f*) Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), s. 6

(*g*) Under the Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), ss. 1, 2, see p. 90, *post*

(*h*) See p. 87, *post*

(*i*) Under the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22, Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), s. 4, see p. 87, *post*

(*k*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 96, Sched. 3. The Metropolitan County Courts are Bloomsbury, Bow, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, West London, Westminster, and Whitechapel.

(*l*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 95.

(*m*) Bankruptcy Appeals (County Courts) Act, 1884 (47 & 48 Vict. c. 9), s. 2; see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 301

(*n*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 131 (2)

(*o*) *Ibid.*, s. 131 (4).

116. The admiralty jurisdiction of the High Court (p) includes the original jurisdiction of the High Court of Admiralty and also additional jurisdiction conferred by statute. It has jurisdiction to try suits of possession (q), questions between co-owners (r), disputes as to mortgages (s), bottomry and respondentia (t), claims for necessaries (u), claims for towage (x); wages, master's wages and disbursements (a); collisions (b), damage to cargo (c); limitation of liability (d), salvage (e); droits of admiralty (f), forfeiture (g); booty of war (h), prize (i), slave trade (k), claims for payment of substitutes for seamen volunteering into the Navy (l).

SECT. 2.  
His  
Majesty's  
High Court  
of Justice.  
Admiralty

(m) *Service out of the Jurisdiction.*

117. As to service out of the jurisdiction there is no absolute right to such service in any case, but it is a question for the exercise of his discretion by the judge (m), and, in exercising such discretion, the judge should consider all the circumstances of the case and affidavits relating to the facts of the case, so far as may be necessary to see whether the plaintiff has a probable cause of action or not (n).

Right to  
serve out of  
jurisdiction.

The kinds of process which can be served out of the jurisdiction are writs or notices of writs, third party notices and counterclaims.

118. The cases in which service out of jurisdiction (o) may be allowed are the following. Whenever (1) the whole subject matter

When may  
be allowed

(p) As to this jurisdiction, see title ADMIRALTY, Vol. I, pp 63-79

(q) Original jurisdiction of the High Court of Admiralty, extended by Admiralty Court Act, 1840 (3 & 4 Vict c 65), s 4

(r) Original jurisdiction

(s) Admiralty Court Act, 1840 (3 & 4 Vict c 65), Admiralty Court Act, 1861 (24 Vict c 10), s 11

(t) Original jurisdiction. Bottomry is where the ship and cargo are hypothecated, Respondentia, where only the cargo is hypothecated

(u) Admiralty Court Act, 1840 (3 & 4 Vict c 65), s 6, Admiralty Court Act, 1861 (24 Vict c 10), s 6

(x) Admiralty Court Act, 1840 (3 & 4 Vict c 65), s 6, increasing original jurisdiction

(a) Original jurisdiction increased by Admiralty Court Act, 1840 (3 & 4 Vict c 65), s 4, Admiralty Court Act, 1861 (24 Vict c 10), ss 10, 35, Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 165, 167, 168, Merchant Shipping Act, 1906 (6 Edw 7, c 48), s 57

(b) Original jurisdiction, increased by Admiralty Court Act, 1840 (3 & 4 Vict c 65), s 6, Admiralty Court Act, 1861 (24 Vict c 10), s 7

(c) Admiralty Court Act, 1861 (24 Vict c 10), s 6

(d) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 502-504, Merchant Shipping Act, 1906 (6 Edw 7, c 48), ss 69, 70, 71

(e) Original jurisdiction, increased by Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 544-565

(f) See title ADMIRALTY, Vol. I, pp 76 et seq

(g) Original jurisdiction

(h) Original jurisdiction

(i) Admiralty Court Act, 1840 (3 & 4 Vict c 65), s 22

(k) Naval Prize Act, 1864 (27 & 28 Vict c 25), s 52

(l) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss. 195, 197

(m) *Société Générale de Paris v Dreyfus Brothers* (1887), 37 Ch D 21, O A.; *Re De Penny, De Penny v Christie*, [1891] 2 Ch 63, *Strauss v Goldschmidt* (1892), 8 T L R 512, O A., *Plaskitt v Eddis* (1898), 79 L T 136

(n) *Société Générale de Paris v Dreyfus*, *supra*, at p 225.

(o) R. S. C., Ord 11, r 1, and see, generally, title PRACTICE AND PROCEDURE.

**SECT 2**  
**His**  
**Majesty's**  
**High Court**  
**of Justice**

of the action is land situate within the jurisdiction (with or without rents and profits), (2) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, (3) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction, (4) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of England, (5) the action is founded on a breach or alleged breach of a contract, wherever made, which, by its terms, ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland, (6) an injunction is sought as to anything to be done within the jurisdiction, or a nuisance within the jurisdiction is sought to be prevented or removed, whether damages are claimed or not, (7) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served in the jurisdiction.

Where it is sought to serve a writ in Scotland or Ireland, and it appears that there is a concurrent jurisdiction in Scotland or Ireland, as the case may be, the court or judge must have regard to the comparative cost and convenience of proceeding in England or in Scotland or Ireland, and in cases of small demands to the powers and jurisdiction of the sheriffs' courts or small debts courts in Scotland and of the civil bill courts in Ireland (p).

In probate actions a writ of summons or notice thereof may, by leave of the judge, be served out of the jurisdiction (q).

application  
for leave.

**119** The application for leave to serve out of the jurisdiction must be supported by an affidavit, or other evidence, stating that, in the belief of the deponent, the plaintiff has a good cause of action, showing in what place or country the defendant is or may probably be found, stating whether the defendant is a British subject or not, and the grounds on which the application is made. No such leave must be granted unless it is made sufficiently to appear that it is a proper case for service out of the jurisdiction (r).

Where the defendant is neither a British subject nor in British dominions notice of the writ, and not the writ itself, is to be served on him (s).

(p) R. S. C., Ord 11, r 2. This provision does not apply to actions for breach of contract, in which actions, if the defendant is domiciled or ordinarily resident in Scotland or Ireland, he cannot be served out of the jurisdiction (*Lenders v Anderson* (1883), 12 Q. B. D. 50).

(q) R. S. C., Ord 11, r 3, and see title PRACTICE AND PROCEDURE.

(r) *Ibid*, r 4.

(s) *Ibid*, r 6. Particular rules (R. S. C., Ord 11, r 8) apply to service of notice of a writ of summons in the case of countries to which they have been applied by order of the Lord Chancellor. These countries are the German Empire (Order, 4th July, 1904, [1904] W. N., Pt II, p. 231), and the Russian Empire (Order, 21st March, [1906] W. N., Pt II, p. 99). It is proposed to apply these rules to orders and notices directed to be served on any person in a foreign country, see draft R. S. C., July, 1909 (127 L. T. Jo 275). See also title PRACTICE AND PROCEDURE.



(iv) *Appellate Jurisdiction*

SECT. 2.

His  
Majesty's  
High Court  
of JusticeHow exer-  
cised  
From inferior  
courts

**120** The appellate jurisdiction is exercised in some cases by divisional courts consisting of two, or sometimes three, judges sitting either in the King's Bench Division or the Probate, Divorce and Admiralty Division, and in others by a single judge

**121** To divisional courts of the King's Bench Division come (a) appeals from county courts (u) and other inferior courts (v) and proceedings on the Crown side of the King's Bench Division (y), appeals from orders made by the judge of the King's Bench Division sitting in chambers in matters not relating to practice and procedure (z), from decisions of revising barristers (a), on cases stated by the Railway Commissioners (b), by midwives whose names have been removed from the roll (c), motions to set aside the award in an arbitration (d), or the decision of a master of the Supreme Court or official referee to whom an action has been referred (e)

**122** To a divisional court of the Probate, Divorce and Admiralty Division come appeals from county courts in admiralty (f) and probate cases (g), and from courts of summary jurisdiction under the Summary Jurisdiction (Married Women) Act, 1895 (h) Also appeals from the decision of any tribunal cancelling or suspending the certificate of a master, mate, or engineer, on an investigation into his conduct, or into a shipping casualty (i)

Admiralty,  
probate and  
matrimonial  
cases.

**123** The appellate jurisdiction of a single judge is exercised in the case of appeals from decisions of the Inland Revenue Commissioners (j), appeals to the judge in bankruptcy from the Board of Trade, official receiver, or trustee (k), appeals from orders made by the masters in chambers and district registrars in the King's Bench

Revenue  
cases etc

(i) See R. S. C., Ord. 59, r. 1

(u) See title COUNTY COURTS, Vol. VIII, p. 607.

(v) See p. 133, *infra*(y) This includes applications for a prerogative writ of mandamus, for *certiorari* (either as appeal from a court of summary jurisdiction, or to transfer an action from an inferior court of record), for *quo warranto*, or prohibition, also assignments of error on outlawry

(z) Judicature Act, 1873 (36 &amp; 37 Vict. c. 66), s. 50, Judicature (Procedure) Act, 1894 (57 &amp; 58 Vict. c. 16), s. 1 (4)

(a) Parliamentary Voters Registration Act, 1843 (6 &amp; 7 Vict. c. 18), ss. 42, 43, Supreme Court of Judicature Act, 1873 (36 &amp; 37 Vict. c. 66), ss. 3, 16, 31, 34

(b) All proceedings for review of a decision of the Commissioners are by appeal to the Court of Appeal (Railway and Canal Traffic Act, 1888 (51 &amp; 52 Vict. c. 25), s. 17 (2))

(c) Midwives Act, 1902 (2 Edw. 7, c. 17), s. 4

(d) R. S. C., Ord. 40, r. 6, Ord. 52, rr. 1—3

(e) *Fraser v. Fraser*, [1905] 1 K. B. 368, O. A.

(f) County Courts Admiralty Jurisdiction Act, 1868 (31 &amp; 32 Vict. c. 71),

26 See title ADMIRALTY, Vol. I, p. 112

(g) Court of Probate Act, 1857 (20 &amp; 21 Vict. c. 77), s. 58

(h) 58 &amp; 59 Vict. c. 39, s. 11, see R. S. C., Ord. 59, r. 4A, which still applies to such appeals

(i) Merchant Shipping Act, 1894 (57 &amp; 58 Vict. c. 60), s. 475

(j) In consequence of R. S. C., Ord. 59, r. 1 (d), being annulled by R. S. C., July, 1901, r. 8

(k) Bankruptcy Act, 1843 (46 &amp; 47 Vict. c. 52), ss. 90, 139.

**SECT 2**  
**His Majesty's High Court of Justice**  
 Division or by the registrars in the Probate, Divorce and Admiralty Division, appeals to the judge to whom company matters are assigned from the Board of Trade, official receiver, or liquidator (*l*), appeals to the judge to whom patent business (*m*) is assigned (*n*) from decisions of the comptroller (*o*) as to the revocation of patents.

**Winding up**      **124.** The appellate jurisdiction of the High Court extends to appeals from orders made or decisions given by a county court having jurisdiction in company winding-up in the same manner and to the same extent as in the case of orders and decisions of the county court within its ordinary jurisdiction (*p*)

#### SUB-SECT 2—*Constitution*

**Constitution**      **125** The High Court was at first divided into five divisions, namely, the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce and Admiralty Division (*q*) Power, however, was given to alter these divisions (*r*) by Order in Council, in pursuance of which the Queen's Bench, Common Pleas, and Exchequer Divisions were consolidated into the Queen's (now King's) Bench Division by an Order in Council of 16th December, 1880 (*s*)

#### SUB-SECT 3—*The Chancery Division*

**Lord Chancellor**      **126** The Lord High Chancellor of Great Britain (*t*) is the president of the division, of which there are six other justices

**Jurisdiction**      **127** To the Chancery Division are assigned all causes and matters in which the Court of Chancery or any judge thereof had exclusive jurisdiction before the Judicature Act, 1873 (*u*), administration

(*l*) Companies (Consolidation) Act, 1908 (8 Edw 7, c 60), ss 153, 224

(*m*) The Patents and Designs Act, 1907 (7 Edw 7, c 29), ss 24, 25, has transferred to the High Court the former jurisdiction of the Judicial Committee in respect of the extension of the term of patents, of compulsory licences for their use, and rescission of patents on the ground that the reasonable requirements of the public have not been satisfied

(*n*) Patents and Designs Act, 1907 (7 Edw 7, c 29), s 92

(*o*) *Ibid*, s 26

(*p*) Companies (Consolidation) Act, 1908 (8 Edw 7, c 60), s 181, see title COMPANIES, Vol V

(*q*) Judicature Act, 1873 (36 & 37 Vict c 66), s. 31

(*r*) *Ibid*, s 32

(*s*) Statutory Rules and Orders Revised, Vol XII, Supreme Court, England, p 1.

(*t*) For the duties etc of the Lord Chancellor, see title CONSTITUTIONAL LAW, Vol VII, p 35

(*u*) 36 & 37 Vict c 66, see s 34 To the High Court of Chancery exclusive jurisdiction was given by a large number of Acts, including *Cestui que vie* Act (6 Ann c 18), Legacy Duty Act, 1796 (36 Geo 3, c 52), Land Tax Redemption Act, 1802 (42 Geo 3, c 116), Infants Property Act, 1830 (11 Geo 4 & 1 Will 4, c 65), Infant Felons Act, 1840 (3 & 4 Vict. c 90), Ecclesiastical Houses of Residence Act, 1842 (5 & 6 Vict c 26); Solicitors Act, 1843 (6 & 7 Vict. c. 73); Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c 18), ss 69–87, Drainage and Improvement of Land Acts, 1845 to 1861 (8 & 9 Vict. c. 56; 10 & 11 Vict. cc 11, 38, 11 & 12 Vict c 119, 13 & 14 Vict c 31, 19 & 20 Vict c 9; 27 & 28 Vict. c. 114), Limited Owners Residences Act, 1870 (33 & 34 Vict. 66), Parliamentary Deposits Act, 1846 (9 & 10 Vict c 20), Trustee Relief Acts and Trustee Acts (now repealed and consolidated by Trustee Act, 1893

actions, partnership actions, actions for redemption and foreclosure of mortgages, matters relating to charges on land, sale and distribution of the proceeds of property subject to any lien or charge, trusts, the rectification or cancellation of deeds, specific performance, partition and sale of real estates, matters relating to infants (*a*), and the jurisdiction under the Conveyancing (*b*) and Settled Land Acts (*c*), Vendor and Purchaser Act (*d*), and also applications for the determination of disputes as to the apportionment of estate duty (*e*), proceedings under the Technical and Industrial Institutions Act, 1892 (*f*), Land Transfer Acts, 1875 and 1897 (*g*), and the Public Trustee Act, 1906 (*h*)

SECT. 2.  
His  
Majesty's  
High Court  
of Justice

Under the Companies (Consolidation) Act, 1908 (*i*), the Lord Chancellor has power to assign the winding-up of companies either to a judge of the Chancery Division or to the judge of the High Court exercising jurisdiction in bankruptcy (*k*)

Winding up  
of companies

#### SUB-SECT. 4.—*The King's Bench Division*

**128** The Lord Chief Justice of England is the president of this division, of which there are fifteen (*l*) other justices

Lord Chief  
Justice

**129** To the King's Bench Division are assigned all causes and matters, civil or criminal, which would have been within the exclusive jurisdiction (*m*) of the Courts of Queen's Bench, Common Pleas at Westminster, and Exchequer (*n*) if their jurisdiction had not been transferred to the High Court.

Jurisdiction.

The Lord Chancellor may from time to time assign bankruptcy

(56 & 57 Vict c 51), Charitable Trusts Acts, 1853, 1855, 1869 (16 & 17 Vict c 137, 18 & 19 Vict c 124, 32 & 33 Vict c 110), Land Registry Act, 1862 (25 & 26 Vict c 53), Infants' Settlements Act, 1855 (18 & 19 Vict c 43), Declaration of Title Act, 1862 (25 & 26 Vict c 67), Judgments Act, 1864 (27 & 28 Vict c 112), Mortgage Debenture Act, 1865 (28 & 29 Vict c 78), Railway Companies Act, 1867 (30 & 31 Vict c 127), Metropolitan Board of Works Loans Act, 1869 (32 & 33 Vict c 102), and National Debt Act, 1870 (33 & 34 Vict c 71). See also Yearly Practice, 1909, p 1288, and Daniel, Chancery Practice, 5th ed, pp 1757—1922, for the exclusive statutory jurisdiction of the Chancery Division

(*a*) Judicature Act, 1873 (36 & 37 Vict c 66), s 34

(*b*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict c 41), ss 2 (xviii), 69 (1)

(*c*) Settled Land Act, 1882 (45 & 46 Vict c 38) s 46

(*d*) Vendor and Purchaser Act, 1874 (37 & 38 Vict c 75).

(*e*) Finance Act, 1894 (57 & 58 Vict c 30), s 14 (2), R S C, Ord 55, r 9c

(*f*) 5 & 56 Vict c 29, s 7 (2)

(*g*) 36 & 37 Vict c 87, 60 & 61 Vict c 65

(*h*) 6 Edw 7, c 55

(*i*) 8 Edw. 7, c. 69, s 132 See title COMPANIES, Vol V

(*k*) See p 62, *post*

(*l*) Increased from fourteen in 1907 on an address from both Houses of Parliament under s 18 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict c. 59)

(*m*) See notes (*l*), (*m*), (*n*) on pp 52 and 53

(*n*) Judicature Act, 1873 (36 & 37 Vict c 66), s 34. By an Order in Council of 16th December, 1880, the Queen's Bench, Common Pleas, and Exchequer Divisions were consolidated, and the offices of Chief Justice of the Common Pleas and Chief Baron were abolished (Statutory Rules and Orders Revised, 1904, Vol. XII., Supreme Court, England, p 1).

**SECT. 2.** business to the King's Bench Division and to a specified judge (o), and may assign the business of the winding-up of companies (a) to this judge or to a judge or judges of the Chancery Division

**His Majesty's High Court of Justice.**

**SUB-SECT. 5—The Probate, Divorce and Admiralty Division**

**President** **130** The division is presided over by the President of the Probate, Divorce and Admiralty Division (b), and there is one other judge of the division (c)

**Jurisdiction** **131** To the Probate, Divorce and Admiralty Division are assigned all causes and matters over which the Court of Probate and the Court for Divorce and Matrimonial Causes would have had exclusive jurisdiction (d) if their jurisdiction had not been transferred to the High Court (e)

**SUB-SECT. 6—The Judges**

**The judges of the High Court** **132** The judges of the High Court are the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, and twenty-two puisne judges. In the absence of the Lord Chancellor the Lord Chief Justice of England is president of the High Court

**Appointment and tenure** The appointment of judges is by the Crown by letters patent (f). The qualification for a judge of the High Court is to be a barrister of not less than ten years' standing (g). Every judge of the High Court holds his office during good behaviour, and is only removable on an address to the Crown by both Houses of Parliament (h).

The Lord Chief Justice has a salary of 8,000*l.* a year (i), and the other judges £5,000, together with an allowance of seven guineas a day for their expenses on circuit. After fifteen years' service or on being disabled by permanent infirmity, judges may retire on a pension, in the case of the Lord Chief Justice of £1,000, and in the case of other judges of £3,500 a year (k).

**SECT. 3—His Majesty's Court of Appeal**

**SUB-SECT. 1—Jurisdiction**

**Transferred jurisdiction** **133** There is transferred to the Court of Appeal the jurisdiction formerly possessed by the Lord Chancellor and by the Court of Appeal in Chancery, including its jurisdiction as a court of appeal in bankruptcy, by the Court of Appeal in Chancery of Lancaster,

(o) Bankruptcy Act, 1883 (16 & 47 Vict. c. 52), s. 94.

(a) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 132.

(b) There is some doubt as to the legality of this title, see note (l) on p. 64, *post.*

(c) See titles ADMIRALTY, Vol. I, p. 59, HUSBAND AND WIFE, WILLS.

(d) See notes (o), (p), (q) on p. 53, *ante.*

(e) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.

(f) *Ibid.*, s. 5.

(g) *Ibid.*, s. 8, and see title BARRISTERS, Vol. II, p. 381.

(h) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 5.

(i) Chief Justice's Salary Act, 1851 (14 & 15 Vict. c. 41).

(k) Judges' Pension Acts, 1799, 1813, 1825 (39 Geo. 3, c. 110, 53 Geo. 3, c. 153, 6 Geo. 4, c. 84), Chief Justice's Pension Act, 1825 (6 Geo. 4, c. 82).

SECT 3  
His  
Majesty's  
Court of  
Appeal.

and by the Chancellor of Lancaster both when sitting alone and when sitting with the Lords Justices of Appeal in Chancery on appeals from the Court of Chancery of Lancaster, by the Lord Warden of the Stannaries, by the Exchequer Chamber (l), by the Judicial Committee of the Privy Council on appeals from the High Court of Admiralty, or from Orders in Lunacy.

**134** The original jurisdiction of the Court of Appeal is very limited, it appears only to extend to making an order for the protection of property (m), granting an injunction pending an appeal either to (n) or from (o) the Court of Appeal where an action has been dismissed, and to making an order to extend time. The Court of Appeal can also hear an original application to strike a solicitor off the rolls (p), and has power to make orders as to costs in the case of appeals, and as to security for the costs of appeals. Original jurisdiction

**135** The appellate jurisdiction of the Court of Appeal includes appeals from a judge in chambers in matters relating to practice and procedure (q), appeals from decisions of a divisional court on appeal from an inferior court, or other person (but only by leave of the divisional court or Court of Appeal) (r), appeals from divisional courts when exercising original jurisdiction, without leave, generally from all orders and judgments of the High Court or of any judge or judges thereof (s), motions for new trials; appeals under the Taxes Management Act, 1880 (t), appeals as to the Bombay Civil Fund (a), appeals under the Workmen's Compensation Act, 1906 (b), appeals under the Agricultural Holdings Act, 1908 (c), appeals from Orders in Lunacy (d), appeals from the Chancery Court of Lancaster, appeals from the Chancery Court of Durham, appeals from the county court of Cornwall in its stannaries jurisdiction, applications for a new trial of an issue tried in the Liverpool Court of Passage, and appeals from that court on issues tried therein, and from judgments in actions tried therein (e), also appeals from decisions of the Railway Appellate jurisdiction

(l) Error from any one of the superior courts of common law lay to the judges of the other two courts sitting in Exchequer Chamber (Law Terms Act, 1830 (11 Geo 4 & 1 Will 4, c 70), s 8)

(m) *Hyde v Worden* (1876), 1 Ex D 309, C A

(n) *Wilson v Church* (1879), 11 Ch D 576, C A

(o) *Polins v Gray* (1879), 12 Ch D 438, C A

(p) *Re Whitehead* (1885), 28 Ch D 614, C A, see per BAGGALLAY, L J, at p 617. It must be observed that this case was before the Solicitors Act, 1888 (31 & 32 Vict c 65)

(q) Judicature (Procedure) Act, 1894 (57 & 58 Vict c 16), s 1 (4)

(r) Judicature Act, 1873 (36 & 37 Vict c 66), s 45, Judicature (Procedure) Act, 1894 (57 & 58 Vict c 16), s 1 (5). See also *Hynne-Finch v Chaytor*, [1903] 2 Ch 475, 484, C A

(s) Judicature Act, 1873 (36 & 37 Vict c 66), s 19

(t) 43 & 44 Vict c 19, s 59 (3)

(a) Bombay Civil Fund Act, 1882 (45 & 46 Vict c 45), s 5

(b) 6 Edw 7, c 58, Sched II (4)

(c) 8 Edw 7, c 28, s 13

(d) *Re Cathcart*, [1893] 1 Ch 466, C A, *Re Cathcart*, [1902] W N 80, C A.

(e) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 10. *Coats v Moore*, [1903] 2 K B 140, C A, *Anderson v Dean*, [1894] 2 Q B 222, C A.

## SECT. 8

His  
Majesty's  
Court of  
AppealConstitution  
of Court of  
Appeal

Commissioners, except as to questions of fact or the *locus standi* of a complainant(*f*), and on questions of law arising upon the records of the London Mayor's Court(*g*)

## SUB-SECT. 2 — Organisation

**136** The Court of Appeal usually sits in two divisions, one of which hears appeals from the King's Bench and Probate, Divorce and Admiralty Divisions, and the other from the Chancery Division(*h*). The Court of Appeal is empowered to sit in three divisions at the same time(*h*)

In interlocutory matters two judges of the Court of Appeal constitute a court, but in final matters three are required(*i*), by consent of the parties, however, such appeals may be heard by two judges only, but if the two judges differ in opinion the case must be re argued before three judges before appeal to the House of Lords(*k*)

## SUB-SECT. 3 — Judges

Judges of  
Court of  
Appeal

**137** The Court of Appeal at present consists of the Lord Chancellor, who is the president of the court, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division(*l*) (these are *ex-officio* judges), and five ordinary members of the court, entitled Lords Justices of Appeal. Ex-Lord Chancellors of Great Britain are also *ex-officio* members of the Court of Appeal(*m*)

The qualification for a Lord Justice of Appeal is to be a barrister of fifteen years' standing or to have been a judge of the High Court for not less than a year(*n*)

The Lord Chancellor may also request the attendance at any time of any judge of the High Court to sit as an additional judge at the sittings of the Court of Appeal, and any judge whose attendance is so requested must attend accordingly. Every judge so attending is to be deemed an additional judge of the Court of Appeal(*o*)

Every judge of the Court of Appeal holds his office during good behaviour, and is only removable on an address to the Crown by both Houses of Parliament(*p*)

The Master of the Rolls has a salary of £6,000 a year(*q*), and the Lords Justices of £5,000(*r*). On resignation the pension of

(*f*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 17 (1), (2)

(*g*) *Le Blanc v. Reuter's Telegram Co., Ltd.* (1876), 1 Ex. D. 408

(*h*) Judicature Act, 1902 (2 Edw. 7, c. 31), s. 1

(*i*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 12

(*k*) Judicature Act, 1899 (62 Vict. c. 6), s. 1

(*l*) As to this title, see Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 4; Judicature Act, 1881 (44 & 45 Vict. c. 68), ss. 4, 8, and Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 3.

(*m*) Judicature Act, 1891 (54 & 55 Vict. c. 53), s. 1.

(*n*) Court of Chancery Act, 1851 (14 & 15 Vict. c. 83), s. 1, Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 8

(*o*) Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), s. 6.

(*p*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 5

(*q*) Court of Chancery Act, 1851 (14 & 15 Vict. c. 83), s. 18.

(*r*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 13

the Master of the Rolls is £3,750 (s) and of the Lords Justices £3,500 (t).

#### SECT 4.—*Rules and Procedure.*

SECT 3.  
His  
Majesty's  
Court of  
Appeal.

Power to  
make rules

**138** A council of the judges of the Supreme Court must assemble at least once in each year to consider procedure and the administration of justice (u). The power of making rules to regulate the practice and procedure of the Supreme Court was at first vested in the Lord Chancellor and certain other judges (a), but in 1881 this power was transferred to the present Rule Committee (b), which consists of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, and four other judges appointed by the Lord Chancellor. Rules may be made by any five members of the Rule Committee, of whom the Lord Chancellor must be one. The President and judges of the Court of Appeal have power to make regulations as to the conduct of business in the Court of Appeal (c). Rules of court made by the Rule Committee must be laid before both Houses of Parliament within forty days if Parliament is sitting, and if not, within forty days of the beginning of the next sitting. There is also power to annul any rules by Order in Council on an address from either House (d).

Under the above powers the Rules of the Supreme Court, 1883, have been made, and since amended and added to by many sets of subsequent rules (e).

There are many other rule-making powers contained in different statutes relating to particular subjects (f). Practice rules are also made by the masters, these, however, are not made under any statutory power.

The procedure of the court in criminal proceedings is regulated by the Crown Office Rules, 1906 (g).

(a) Judge's Pensions Acts, 1799, 1813, 1825 (39 Geo 3, c 110, 53 Geo 3, c 153, 6 Geo 4, c 84)

(t) *Ibid*

(u) Judicature Act, 1873 (36 & 37 Vict c 66), s 75. This enactment, however, appears only to have been carried into effect occasionally, see Chitty's Statutes, Vol VI, Judicature, p 28 (n), and Yearly Supreme Court Practice, 1909, p 1310.

(a) Judicature Act, 1875 (38 & 39 Vict c 77), s 17, Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59), s 17.

(b) Judicature Act, 1881 (44 & 45 Vict c 68), s 19.

(c) Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59), s 16.

(d) Judicature Act, 1875 (38 & 39 Vict c 77), s 25.

(e) For the procedure of the Supreme Court, see title PRACTICE AND PROCEDURE.

(f) Rules have been made relating to the following subjects — Acknowledgments by married women, Finance Act, 1895, bankruptcy, bills of sale, filing etc of powers of attorney, charitable trusts recovery, reduction of capital cases, deeds of arrangement, Divorce Rules, Probate Rules, *commissions rogatoires*, guardianship of infants, Judgments Extension Act, 1888, London and Middlesex juries, Merchant Shipping Act, 1894, election petitions, Part VI of the Municipal Corporations Act, 1882, life assurance companies, searches for judgments etc, settled estates, settled land, questions as to transfer of powers under Local Government Acts, 1880 and 1894, and London Government Act, 1899, West Riding of Yorkshire rivers. The rules themselves will be found in the Yearly Supreme Court Practice, 1909.

(g) Statutory Rules and Orders, 1906, pp 605—733.

SECT 5  
Officers and  
Central  
Office

Official  
referees

SECT. 5 — *Officers and Central Office.*

SUB SECT 1 — *Official Referees*

**139** Official referees are (*h*) permanent officers attached to the Supreme Court for the purpose of acting as arbitrators under submissions to them (*i*), or of inquiring into and reporting on any question arising in a cause or matter referred to them by a judge (*j*), or of trying causes or matters referred to them for trial (*k*) Three of these officers are appointed, the qualification is that they should be either barristers or solicitors of ten years' standing (*l*)

Rules have been made in regard to the powers and duties of official referees (*m*)

SUB-SECT 2 — *Examiners*

Examiners

**140** A sufficient number of barristers-at-law, of not less than three years' standing, are appointed by the Lord Chancellor to act as examiners of the court for five years Their duties are to take examinations under orders of the court in all divisions of the High Court, except in admiralty actions (*n*) Examinations are distributed among them in rotation (*o*) They are paid by fees which are prescribed by rules of the Supreme Court (*p*) In determining the place and time of examinations the convenience of the witnesses and the circumstances of the case are to be considered (*q*)

Special examiners may also be appointed to take the evidence of any witness at any place (*r*)

SUB-SECT 3 — *Masters of the Supreme Court*

(1) *King's Bench Division*

Masters in  
King's Bench  
Division

**141** There are seven masters of the Supreme Court (King's Bench Division) Of these the senior master is the King's Remembrancer (*s*) The office of King's Coroner and Master of the Crown Office is held by a master (at present the senior master) under appointment by the Lord Chief Justice (*t*)

Assistant  
masters.

There are also two assistant masters, one of whom is attached to the Crown Office, and the other to the Court Orders and Associates Department of the Crown Office

(*h*) Judicature Act, 1873 (36 & 37 Vict c 66), s 83

(*i*) Arbitration Act, 1889 (52 & 53 Vict c 49), s 3

(*j*) *Ibid*, s 13

(*k*) *Ibid*, s 14

(*l*) Letter of Lord Chancellor (Cairns) to Chancellor of Exchequer (20 J. 614)

(*m*) R S O, Ord. 36, rr 45—51 See, generally, title ARBITRATION, Vol L, pp. 483—492

(*n*) R. S O, Ord 37, rr 39, 40.

(*o*) *Ibid*, r 41

(*p*) *Ibid*, r. 51

(*q*) *Ibid*, r. 45

(*r*) But see *Bute (Marquess) v James* (1886), 33 Ch. D 157

(*s*) Judicature (Officers) Act, 1879 (42 & 43 Vict c. 78), s 14 Sched. I, Part III See also title CROWN PRACTICE

(*t*) *Ibid*, s 9 (2)



\* 142 The duties of these masters comprise—(1) the control and superintendence of the Central Office of the Supreme Court (u); (2) judicial work in chambers (a), and (8) issuing directions on points of practice. They have also jurisdiction to refer actions for inquiry and report, or for trial (b).

SECT. 8.  
Officers and  
Central  
Office.

Duties of  
masters.

Three masters sit daily in chambers, where they adjudicate on summonses, subject to an appeal to the judge. In this capacity they have the jurisdiction conferred on, or transferred to, "the court or a judge" by the Rules of the Supreme Court. A master can exercise, with certain exceptions, all the jurisdiction of a judge in chambers under the Judicature Acts or the Rules of the Supreme Court, or the Arbitration Act (c). One master, according to the rota arranged between all the masters, sits daily as practice master; he has to be present at and control the business of the Central Office, and to give the necessary directions as to practice and procedure (d).

143 The masters are appointed by the Lord Chief Justice and the Master of the Rolls alternately (e). The qualification is to be a practising barrister or special pleader or solicitor of five years' standing (f). The tenure of the office is during good behaviour (g).

Appointment.

#### (u) Chancery Division

144 There are twelve masters of the Supreme Court (Chancery Division) (h). To every two judges in that division there are assigned four of these masters. They have a staff of clerks to assist them.

Masters in  
Chancery  
Division

The masters (h) in the Chancery Division have no independent jurisdiction as have those of the King's Bench Division, all their authority is derived from the judge to whom they are assigned, and everything they do is done in his name (i), or by way of certificate. Any party, also, is entitled to have any question brought before the judge and to see him personally, and that even if the point be not disputed (k). The duties of these masters are to make investigations and take accounts etc., under the direction of the judge (l).

(u) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 7.

(a) R. S. C., Ord. 54, r. 12.

(b) Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 13, 14, R. S. C., Ord. 54, r. 12A.

(c) "When the rules say the court or a judge it is understood that 'the court' means a judge or judges in open court, and 'a judge' means a judge sitting in chambers" (*Re B.*, [1892] 1 Ch. 459, O. A., per KAY, L. J., at p. 463). See Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 39, and R. S. C., Ord. 54, r. 12.

(d) R. S. C., Ord. 61, r. 2.

(e) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 9 (1).

(f) *Ibid.*, s. 10.

(g) *Ibid.*, s. 11.

(h) These officers, who were formerly called chief clerks, have since February 22, 1897, been entitled to be called masters of the Supreme Court by an order of the Lord Chancellor made with the concurrence of the Lord Chief Justice and the consent of the Treasury.

(i) *Hayward v. Hayward* (1854), Kay, App. xxxi, *Lloyds Bank v. Princess Royal Colliery Co.* (1900), 48 W. R. 427.

(k) *Hayward v. Hayward*, *supra*, *Re Rigg, Wadham v. Rigg* (1862), 10 W. R. 365, *Re Home Counties Life Assurance Co.* (1862), 10 W. R. 457, *Lydon v. Brown* (1882), 20 Ch. D. 731, O. A., *Scott v. Homer* (1890), 60 L. J. (Ct.) 238.

(l) R. S. C., Ord. 55, rr. 15—18.

**SECT. 5.  
Officers and  
Central  
Office.**

A certificate of a master does not require the express approval of the judge, but on an application by motion or summons the certificate may be discharged or varied (*m*)

The qualification for master of the Supreme Court (Chancery Division) is to have been admitted and practised as a solicitor for ten years (*n*).

(iii) *Taxing Office*

**Taxing office  
and taxing  
masters**

**145.** The Central Office of the Supreme Court conducts the business formerly conducted by the Chancery taxing office, of the Bankruptcy taxing office, of the taxing department of the office of the masters in lunacy, and of the taxing office of the Registrar in Companies Winding-up (*o*) All taxations of costs in the Chancery and King's Bench Divisions take place in a department of the Central Office called the Supreme Court taxing office There are eleven masters of the Supreme Court (taxing office), one of whom sits daily to deal with short and urgent cases, while other cases are referred to some one of these masters

There is, apparently, no qualification prescribed for the appointment of a master of the Supreme Court (taxing office) (*p*) A master has the right, subject to the approval of the Lord Chancellor, to appoint a deputy in case of absence from illness or other reasonable cause (*q*) A master may not practice as a barrister or solicitor, and if the latter, he must be struck off the roll on appointment (*r*).

**SUB SECT 4 — Registrars of the Chancery Division.**

**Registrars**

**146** There may be thirteen (*s*) registrars of the Chancery Division (*t*) They attend the judges of the Chancery Division and the Court of Appeal upon the hearing of appeals from the Chancery Division Their duties are to take notes of the orders and judgments given, and to draw up and settle and pass them They have also to keep distinct lists of the causes and matters set down to be heard before each judge of the Chancery Division

On the occurrence of a vacancy in the office of registrar, the senior of the clerks to the registrars, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, is to be appointed registrar (*u*)

(*m*) R S O, Ord 55, rr 65, 71

(*n*) Court of Chancery Act, 1852 (15 & 16 Vict c 80), s 17

(*o*) Statutory Rules and Orders Revised, Vol XII, p 924

(*p*) The first masters of the Supreme Court (taxing office) were either Chancery taxing masters or were appointed to vacancies amongst the statutory masters of the Supreme Court. It is presumed that any future appointment will be made under the Court of Chancery Act, 1842 (5 & 6 Vict c 103), under which the former Chancery taxing masters were appointed.

(*q*) Court of Chancery Act, 1842 (5 & 6 Vict c 103), s 6

(*r*) *Ibid.*, s 11

(*s*) The number varies from time to time, there are now ten, see Court of Chancery (Officers) Act, 1867 (30 & 31 Vict c 87), s 8, R S O, Ord 62, r 17

(*t*) For the history of this office, see Yearly S. O P, 1909, pp 911 *et seq*

(*u*) Court of Chancery Act, 1841 (5 Vict c 5), s 38, Court of Chancery (Officers) Act, 1867 (30 & 31 Vict. c 87), s 8, Judicature Act, 1873 (36 & 37 Vict c 66), s 77.

• In case of illness a registrar, with the approval of the Lord Chancellor, and on failure by the registrar, the Lord Chancellor, may appoint a deputy (b).

SECT. 4.  
Officers and  
Central  
Office.

SUB-SECT. 5—*Central Office of the Supreme Court*

147. The Central Office of the Supreme Court was created in 1879 (c), and consists of the following departments (d):—  
(1) Writ Appearance and Judgment Department; (2) Summons and Order Department, (3) Filing and Record Department, (4) Taxing Office, (5) Enrolment Department, (6) Judgments and Married Women's Acknowledgments Department, (6) Bills of Sale Department, (8) King's Remembrancer's Department, (9) Crown Office; (10) Associates Department. It is staffed by first, second, and third class clerks, appointed by the Lord Chancellor, the Lord Chief Justice, and the Master of the Rolls in rotation. These clerks are removable by a majority of these judges, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal (e).

The Central  
Office.

SUB-SECT. 6—*Paymaster General and Pay Office*

148. The office of His Majesty's Paymaster-General was established in 1835. The appointment is by warrant under the Royal Sign Manual.

Paymaster-  
General.

In 1872 the business of the Accountant-General of the High Court of Chancery was transferred to the Paymaster-General (f), and in 1883 (g) all the accounting departments of the Supreme Court of Judicature were consolidated into the pay office of the Supreme Court. This office, which is the Paymaster-General's office for the business of the Supreme Court, is regulated by the Supreme Court Funds Rules, 1905 (h). All moneys and funds which are paid into or out of court pass through this office. It is under the assistant paymaster-general for Supreme Court business. This officer has under him a deputy assistant paymaster-general and a staff of clerks. All securities and moneys in court are vested in the Paymaster-General for and on behalf of the Supreme Court of Judicature (i).

Pay office.

SUB-SECT. 7—*District Registrars*

149. District registrars of the High Court of Justice are appointed under the Order in Council constituting the district registry, which may provide that any registrar of any county court, or any registrar, or prothonotary, or district prothonotary, of any local court the jurisdiction of which was abolished by the

District  
registrars

(b) Court of Chancery Act, 1841 (5 Vict. c. 6), s. 39.

(c) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), ss. 4, 5, 6.

(d) R. S. C., Ord. 61, r. 1.

(e) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 9.

(f) Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44).

(g) Judicature (Funds etc.) Act 1883 (46 & 47 Vict. c. 29).

(h) Statutory Rules and Orders, 1905 (No. 931, L. 21), p. 479; see also Yearly Supreme Court Practice, 1909, 1601.

(i) Judicature (Funds etc.) Act, 1883 (46 & 47 Vict. c. 29), s. 2.

**SECT 5**  
**Officers and**  
**Central**  
**Office.**

Judicature Act, 1878 (*k*), or from which an appeal was thereby given to the Court of Appeal, or any person who, having been a district registrar of the Court of Probate or of the Court of Admiralty, becomes a registrar of the High Court, shall be a registrar of the High Court (*l*) Registrars of any inferior court of record having jurisdiction in any part of the district defined by the Order in Council constituting the district registry are also qualified (*m*) If the Lord Chancellor, with the concurrence of the Treasury, considers it expedient from the nature and extent of the business that the office should be conferred on some person not qualified as above, it is lawful for him to appoint a solicitor of five years' standing (*n*)

The district registrar may, with the approval of the Lord Chancellor and subject to regulations made by the Lord Chancellor, appoint a deputy for a period not exceeding three months (*o*)

There is a statutory power to establish district registries by Order in Council (*p*)

**Duties of**  
**district**  
**registrars**

**150** The registrars have power to administer oaths and perform such duties as shall be assigned to them by rules of court (*q*) Writs of summons may be issued, and further proceedings down to and including entry for trial, and, in case of non-appearance of the defendant, down to and including final judgment, may be had in the district registry (*r*), where also accounts and inquiries may be taken, and books and documents produced (*s*)

**Procedure**

**151** The proceedings in district registries are regulated by rules of court (*t*) These rules provide that leave to enter judgments in default of appearance (*u*), leave to enter interlocutory judgments against third parties (*v*), leave to issue or renew writs of execution, examinations of judgment debtors, garnishee orders, charging orders *visi*, and interpleader orders, are to be taken in the district registry (*c*)

A district registrar has all the authority and jurisdiction of a master of the Supreme Court either of the King's Bench or the Chancery Division so far as relates to proceedings in the district registry (*d*)

The district registrars at Manchester and Liverpool have certain additional powers in Chancery actions (*e*)

There is an appeal from the district registrar to a judge (*f*)

*k*) 36 & 37 Vict c 66

*l*) *Ibid.*, s 60

*m*) Judicature Act, 1875 (38 & 39 Vict c 77), s 13

*r*) Judicature Act, 1881 (44 & 45 Vict c. 68), s 22

*n*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59), s 22.

*p*) Judicature Act, 1873 (36 & 37 Vict c 66), s 60

*q*) *Ibid.*, s 62

*Ibid.*, s 64, R S O, Ord 35, r 1.

*Ibid.*, s 66

R S O, Ord 35

*a*) Ord 35, r 2

Ord. 10, rr 50, 51, Ord 35, r 5.

R. S. O., Ord 35, r 5

*Ibid.*, r 6

*e*) *Ibid.*, r 6A

*f*) *Ibid.*, r 9

• 152 Actions may be removed as of right from the district registry by the defendant in the case of specially indorsed writs when either no application for summary judgment has been made within four days from appearance or leave to defend has been obtained, and in the case of writs not specially indorsed before delivering defence, and also in admiralty actions *in rem* by any person who has intervened (g) Actions may be removed from London to a district registry by the court or a judge on good cause shown (h)

SECT. 8.  
Officers and  
Central  
Office

Removal of  
Actions

SUB-SECT 8 — *Officers of the Probate, Divorce and Admiralty Division*

153 The offices of the Probate, Divorce and Admiralty Division are separate from the Central Office of the Supreme Court, and are located at Somerset House, except the Admiralty Registry, which is at the Royal Courts of Justice There are four probate registrars, who deal with summonses in probate and divorce matters in a similar manner to masters of the Supreme Court in matters in the King's Bench Division (i) They are assisted by a staff of clerks There are also forty district probate registrars, who deal with non-contentious matters in probate

Probate  
registrars

154 The Admiralty Registry has a registrar, an assistant registrar or marshal, and a staff of clerks There is also an admiralty district registrar at Liverpool, the limits of whose registry may be fixed by Order in Council (k)

Admiralty  
registrars

SUB-SECT 9 — *The Official Solicitor*

155 Formerly known as the Solicitor to the Sutors' Fund, and then as the solicitor to the High Court of Chancery, this officer has, since the Judicature Act, borne the title of Official Solicitor of the Supreme Court, and has no longer any duties to discharge with reference to funds in court A relic of his former connection with those funds, however, survives in the requirement that a copy of every petition or summons for dealing with funds which have been placed in the list of dormant funds shall, where the fund amounts to or exceeds £500, be served on him unless the court or judge shall otherwise direct (l)

Official  
solicitor

The present duties of the office are of a very general nature, and include visiting prisoners confined in Brixton or Holloway Prisons for contempt of court, and carrying out the instructions of the Lord Chancellor as respects such prisoners (m), acting as solicitor to parties defending actions *in forma pauperis*, if so directed by the court under special circumstances (n), acting as guardian *ad litem* to infants and persons of unsound mind not so found by inquisition (o), conducting sales by order of the court if the parties to

(g) R S C, Ord 35, r 13

(h) *Ibid.*, r 17

(i) See R S C, Ord. 54, r 12

(k) Liverpool Admiralty District Registrar's Act, 1870 (33 & 34 Vict c 45)

(l) R S C, Ord 22, r 12 b

(m) See title CONTEMPT OF COURT, Vol VII., p 325

(n) See *Moutrie v Mitchell*, [1901] 1 K B 596, O A, and title PRACTICE AND PROCEDURE

(o) See R S C, Ord. 16, rr 18 19, and titles INFANTS AND CHILDREN;

**SECT. 5.**  
**Officers and**  
**Central**  
**Office**

the action cannot agree upon an independent solicitor; making certain investigations and reports in lunacy (*p*), acting, when so appointed, as a judicial trustee (*q*), and, generally, assisting the court in cases where the judge considers that the assistance of a solicitor is required. Where there is undue delay in any proceedings under any judgment or order he may be required to take steps to expedite matters, or to himself conduct the proceedings (*r*).

**SECT. 6—The Circuit System.**

**SUB-SECT. 1—In General**

**The circuits**

**156.** Judges go into every county except Middlesex (*s*) under commissions of the peace (*t*), of oyer and terminer (*u*), of general gaol delivery (*v*) of assize (*w*), incident to the commission of assize is the jurisdiction to try causes *at nisi prius*. These commissions enable them to try criminal and civil cases in the several counties. Sometimes King's Counsel are employed as special commissioners to relieve the judges from part of their work. The names of all the judges and of the King's Counsel and counsel having patents of precedence practising on the respective circuits are usually included in the commission (*x*). There is power to include in any commission of assize, oyer and terminer, or gaol delivery the name of any county court judge (*y*). There are seven circuits (*z*).

**LUNATICS AND PERSONS OF UNFOUNDED MIND** As to costs see R S O, Ord 65, r 13 (*Goutly v Jones*, [1907] W N 161, *Eady v Elsdon*, [1901] 2 K B 460, O A).

(*p*) Rules in Lunacy, 1893, rr 1, 2, Statutory Rules and Orders Revised Vol VIII, Lunatic, England, p 29.

(*q*) Judicial Trustees Act, 1896 (59 & 60 Vict. c. 30), and Rules made thereunder.

(*r*) R S O, Ord 33, r 9, Ord 65, r 11, and see *Re Corsellis* (1884), 50 L. T. 703, O A.

(*s*) From very early times judges of the superior courts of common law were sent into every county annually to try actions. Previously to the introduction of this system what were called "eyres" were held not oftener than once in seven years in each county, commissions of assize were also issued for the trial of actions of novel disseisin and mort d'ancestor, which were very numerous.

(*t*) The names of all the judges are included in the commission of the peace for each county. The commission of the peace binds the sheriffs and justices to give attendance on the judges.

(*u*) The commission of oyer and terminer empowers the judges to try persons not in gaol for treasons, felonies etc.

(*v*) The commission of general gaol delivery empowers the judges to try every prisoner in the gaol committed for any offence whatever, so as to clear the gaol of prisoners.

(*w*) The commission of assize empowers the judges to try civil actions.

(*x*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s 7, and see Yearly Supreme Court Practice, 1909, p 1353.

(*y*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s 16.

(*z*) There were formerly six circuits—the Northern, the Midland, the Norfolk, the Home, the Oxford, and the Western, to these were added the North Wales and the South Wales Circuit. These circuits were discontinued by an Order in Council (Statutory Rules and Orders Revised, Vol XII, Supreme Court, England, p 22) made under the Judicature Act, 1875 (38 & 39 Vict. c. 77), and new circuits were appointed. For a list of the circuits see title BARRISTERS, Vol II, p 366, and Order in Council of 28th June, 1909 (*London Gazette*, July 2, 1909).

SUB-SECT 2.—*Assizes.*SECT. 4.  
The Circuit  
System.  
Assizes.

157. Assizes are held four times in the year (a), but if not more than five days before the commission day it appears to the clerk of assize that there is no business to be transacted requiring the attendance of jurors, he may give notice dispensing with the attendance of jurors (b) In such a case it is not necessary to hold the court of assize unless there is any other business to be transacted which does not require the attendance of jurors (c)

At the summer and winter assizes both civil and criminal business is taken on all circuits At the autumn circuit only criminal business is taken, except at Birmingham, Manchester, Liverpool, Leeds, and Swansea At the Easter circuit civil and criminal business is taken at Manchester and Liverpool, and criminal only at Leeds (d)

SUB SECT 3.—*Officers*

158 The principal officer in connection with assizes is the clerk of assize (e) His duties are to open the assize by reading the

Clerk of  
assize.

(a) Statutory Rules and Orders Revised, Vol XII, Supreme Court, England, p 49 In ancient times assizes were held in all counties—twice in the year, that is, in the spring and autumn vacations—except in the counties of York and Lancaster, where no assizes were held in spring In the eighteenth century it became a common practice to issue commissions for assizes to be held in winter—that is, in the vacation following Michaelmas term These latter winter assizes are regulated by the Winter Assizes Acts, 1876 and 1877 (39 & 40 Vict c 57, 40 & 41 Vict c 46) Under these Acts counties may be united for the purpose of holding winter assizes This power was extended to spring assizes by the Spring Assizes Act, 1879 (42 Vict c 1) This is done by Orders in Council, which are issued annually These Orders in Council are printed and put on sale as statutory rules and orders, under the Rules Publication Act, 1893 (56 & 57 Vict c 66), and the rules made thereunder (Statutory Rules and Orders Revised, Vol XI, Statutory Rule, p 1) Orders in Council are also in force regulating the assizes in Lancashire (Statutory Rules and Orders Revised, Vol XII, Supreme Court, England, p 9), in Yorkshire (*ibid*, p 16), fixing commission days and the places for winter and summer assizes, making special regulations for Warwickshire, and as to Chancery and other causes at Liverpool and Manchester (*ibid*, p 27), as to the termination of the winter assizes (*ibid*, p 38), amending the order as to places for holding assizes (*ibid*, p 39), as to commission days, as to the autumn, winter and Easter assizes on the Northern Circuit, and as to winter assizes on the North and South Wales Circuits (*ibid*, p 49), as to summer and winter assizes on the North and South Wales Circuits (*ibid*, p 51), and two orders made in 1907 altering the dates for holding assizes in consequence of the alteration of the commencement of the Long Vacation (Statutory Rules and Orders, 1907, p 1015, 1016) The Winter Assizes Acts, 1876 and 1877 (39 & 40 Vict c 57, 40 & 41 Vict c 46), and the Spring Assizes Act, 1879 (42 Vict c 1), give power to His Majesty by Order in Council to extend the jurisdiction of the Central Criminal Court during the months from September to May inclusive over the neighbouring counties Orders in Council are made annually under these powers (see table of Temporary Orders at the end of the annual volumes of Statutory Rules and Orders) See also title CRIMINAL LAW AND PROCEDURE, p 286, *post*

(b) Assizes and Quarter Sessions Act, 1903 (8 Edw 7, c 41), s 1

(c) *Ibid* s 2

(d) A new arrangement of the dates of the holding of assizes was made by Order in Council of 28th June, 1909 (*London Gazette*, July 2, 1909)

(e) The duties of a clerk of assize under the old practice are set out in detail in "The Clerk of Assize, Judges-Marshall and Crier being the true Manner and Form of the Proceedings at the Assizes and General Gaol-Delivery, both in the Crown Court, and *Nisi Prius* Court, and The Right ways of entering of

## SECT 6

**The Circuit System**

commissions, and generally to perform such functions of a master and of an assessor as may be necessary (*f*) The power of appointment is vested in the senior judge going the circuit for the summer and winter assizes (*g*) Where the clerk of assize is paid by salary he may not take any fee for his own use (*h*) The tenure of the office is regulated by the Clerks of Assize etc Act, 1869 (*i*), under which the qualification is three years' standing at the bar in actual practice, or as special pleader or conveyancer, or actual practice as a solicitor, or as a subordinate officer of a clerk of assize on circuit

**Clerk of arraigns**

The clerk of arraigns is an assistant to the clerk of assize, and opens the commission in case of his absence He performs on the Crown side similar duties to those of the clerk of assize The senior judge on the circuit for the summer and winter assizes has the right of appointment to this office (*j*)

Subordinate officers to the clerk of assize who are paid out of moneys provided by Parliament may not be removed from office without the sanction of the Treasury (*k*)

**Judge's marshal.**

Each judge when on circuit is attended by an officer called the marshal, who is appointed by the judge for each circuit, and who receives records for trials, swears in the grand jury, and acts as secretary to the judge.

## Part VI.—Courts of Criminal Jurisdiction (*l*)

### SECT 1—*Courts of Summary Jurisdiction*

**Courts of Summary Jurisdiction**

**159** Courts of summary jurisdiction are held either before justices of the peace sitting in petty sessions or metropolitan police magistrates or stipendiary magistrates (*m*)

#### SUB-SECT 1—*Constitution*

**Petty sessions**

**160** Counties are divided into petty sessional divisions (*n*), which

all Pleas, Verdicts, Judgments, and Orders in either of the said Courts" (by T. W., London, 1860)

(*f*) "Clerk of the Assize is he who writes all Things judicially done by the Justices of Assize in their Circuits (Crompton, *L'Authentic et Jurisdiction des Courts*, 227) This officer is associated to the Judge in Commission of Assize to take Assizes etc" (Jacob's Law Dictionary)

(*g*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 21

(*h*) 32 & 33 Vict. c. 89, s. 5

(*i*) 32 & 33 Vict. c. 89

(*j*) 47 & 48 Vict. c. 61, s. 21

(*k*) Clerks of Assize etc. Act, 1869 (32 & 33 Vict. c. 89), s. 7

(*l*) For criminal jurisdiction, generally, see title CRIMINAL LAW AND PROCEDURE, p. 225, post

(*m*) For the appointment, qualification, and disqualification of justices and magistrates, see title MAGISTRATES

(*n*) Division of Counties Act, 1828 (9 Geo. 4, c. 43).



may be altered by quarter sessions (o). In these divisions the sittings of the justices out of quarter sessions are called petty sessions. Every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate, having a separate commission of the peace, or any part thereof, within England and Wales, at any police court or other places appointed in that behalf, is a petty sessions of the peace, and the district for which the same is held is a petty sessional division.

SECT. 1.  
Courts of  
Summary  
Jurisdiction.

A petty sessional court is defined (p) as a court of summary jurisdiction consisting of two or more justices, when sitting in a petty sessional court-house, and includes the Lord Mayor of the City of London, and any alderman of that city, and any metropolitan or borough police magistrate, or other stipendiary magistrate, when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace (q).

Petty  
sessional  
court.

Convictions on summary proceedings before justices are matters of record (r). Up to 1848 they were drawn up on parchment, as was the case with all records, but now they may be on parchment or paper (s).

Convictions.

Justices are protected from actions on account of errors in judgment so long as they act within the line of their authority (t). Some authorities have doubted whether justices out of sessions acting judicially are judges of record, but the better opinion appears to be that they are (u).

Protection of  
justices

#### SUB-SECT 2—Jurisdiction

161 The jurisdiction of courts of summary jurisdiction and petty sessional courts extends to the hearing and determining of charges

Summary  
jurisdiction

(o) Petty Sessional Divisions Act, 1836 (6 & 7 Will 4, c 12)

(p) *I.e.*, a court-house or other place where justices are accustomed to assemble for holding special or petty sessions, or a place appointed as a substitute for such place.

(q) Interpretation Act, 1889 (52 & 53 Vict c 63), s 13

(r) "Convictions have undoubtedly always been treated as records, and for that reason they were, prior to 4 Geo 2, c 26 (now repealed), required when filed to be in Latin, therefore the returning them either to this court, or to the sessions, does not alter their character" (*Chancy v Payne* (1841), 1 Q B 712, *per* Lord DENMAN, C J, at p 724)

(s) Summary Jurisdiction Act, 1848 (11 & 12 Vict c 43)

(t) *Miller v Seure* (1777), 2 Wm Bl 1141, *per* DE GUEY, O J, at p. 1145. See also Justices Protection Act, 1848 (11 & 12 Vict c 44), and titles MAGISTRATES, PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(u) *Busten v Carew* (1825), 3 B & C 649. "It maketh not a little, both for maintenance of the peace, and for the credit of the justices thereof, that they are numbered amongst the judges of record" (Lambard, *Eirenarcha*, Bk 1, c. xiii). "Now touching our justice of the peace, it is the opinion of the court (Y B, 9 Edw 4, c 8, 14 Hen 8, c 16) and of divers other books in our law, that every one of them (even by himself) is a judge of record, for . . . he may take a recognizance of the peace which none other can do but a judge of record, because the knowledging of that summe is to remain as a matter of record" (*ibid.*).

**SECT 1.**  
**Courts of**  
**Summary**  
**Jurisdiction.**

which are triable summarily (v). These relate to the following matters Notice of accidents to workmen (w); adulteration of seeds (x), agricultural gangs (y); aliens (s); alkali etc. works (a); animals (b), apprentices (c), army and other military forces (d); arsenic (e), assault, except where accompanied by an attempt to commit a felony, or where the court thinks it should be prosecuted by indictment (f), barbed wire fences (g); bicycles (h), billiard tables (i); births and deaths registration (j), boiler explosions (k), brawling in churches and chapels (l), bread (m), bribery and corruption (n); brothels (o); building societies (p); burials (q); byelaws of local

(v) See also, generally, titles CRIMINAL LAW AND PROCEDURE, p 225, *post*, MAGISTRATES, etc

(w) Notice of Accidents Acts, 1894 and 1906 (57 & 58 Vict c 28, s 1, 6 Edw 7, c 53) See title MASTER AND SERVANT

(x) Adulteration of Seeds Act, 1869 (32 & 33 Vict c 112), s 3 See title AGRICULTURE, Vol I, p 292

(y) Agricultural Gangs Act, 1867 (30 & 31 Vict c 130), ss 4, 5 See title AGRICULTURE, Vol I, p 276

(s) Aliens Act, 1905 (5 Edw 7, c 13), ss. 1, 3, 4, 5, 7 See title ALIENS Vol I, p 328

(a) Alkali, etc Works Regulation Act, 1906 (6 Edw 7, c 14), ss 8, 15

(b) Diseases of Animals Act, 1894 (57 & 58 Vict c 57), ss 51-51 See title ANIMALS, Vol I, p 419

(c) Employers and Workmen Act, 1875 (38 & 39 Vict c 90), s 12 See title MASTER AND SERVANT

(d) Regulation of the Forces Act, 1881 (44 & 45 Vict c 57), s 39, Army Act, 1881 (44 & 45 Vict c 58), Reserve Forces Act, 1882 (45 & 46 Vict c 48), ss 25, 27, Militia Act, 1882 (45 & 46 Vict c 49), ss 42-44, Annual Army Acts, 1881-1908 See title ROYAL FORCES

(e) Arsenic Act, 1851 (14 & 15 Vict c 13), s 4

(f) Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 39, 40, 42-46, County Courts Act, 1888 (51 & 52 Vict c 43), s 168 See title CRIMINAL LAW AND PROCEDURE, p 605, *post*

(g) Barbed Wire Act, 1893 (56 & 57 Vict c 32), s 3 See title BOUNDARIES AND FENCES, Vol III, p 128

(h) Local Government Act, 1888 (51 & 52 Vict c 41), s 85 See title STREET TRAFFIC

(i) Gaming Act, 1845 (8 & 9 Vict c 109), ss 11, 12, Licensing Act, 1872 (35 & 36 Vict c 94), s 75

(j) Births and Deaths Registration Act, 1874 (37 & 38 Vict c 88), ss 5, 15, 17-20, 35, 39, 40 (see also Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 254, 339 See title REGISTRATION OF BIRTHS AND DEATHS

(k) Boiler Explosions Acts, 1882 (45 & 46 Vict c 22), s 5, 1890 (53 & 54 Vict c 35)

(l) Places of Religious Worship Act, 1812 (52 Geo. 3, c 155), s 12, Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict c 32), s 1 See title ECCLESIASTICAL LAW

(m) Bread Act, 1836 (6 & 7 Will 4, c 37), ss 4-10, see also Weights and Measures Act, 1889 (52 & 53 Vict c 21) See titles FOOD AND DRUGS, WEIGHTS AND MEASURES

(n) Bribery etc (Prevention of Corruption Act, 1906 (6 Edw 7, c 34), s. 1)

(o) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 11, Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 13

(p) Building Societies Acts, 1874 and 1894 (37 & 38 Vict c 42, ss 31, 43, 57 & 58 Vict c 47), ss. 21-23 See title BUILDING SOCIETIES, Vol. III., p 386

(q) Burial Act, 1853 (18 & 19 Vict c 128), s 2 See also Burial of Drowned Persons Act, 1908 (48 Geo 3, c 75), s 1, Cremation Act, 1902 (2 Edw. 7, c 8), s. 8, and title BURIAL AND CREMATION, Vol I, p 401,

authorities (r); canals (s), canal boats (t); chaff-cutting machines (u); children and infants (v); chimney sweepers (w); clubs (x); companies (y); constables, neglect of duty by (z); copyright (a); corn returns (b); cruelty to animals (c); customs (d); dogs (e); drunkenness (f); excise (g); explosives (h); factories and workshops (i); fertilisers and feeding stuffs (j); fire alarms (k); food and

(r) Towns Improvement Clauses Act, 1847 (10 & 11 Vict c 34), Town Police Clauses Act, 1847 (10 & 11 Vict c 89), Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict c 77), Public Health Act, 1875 (38 & 39 Vict c 55), and amending Acts, Municipal Corporations Act, 1882 (45 & 46 Vict c 50), Local Government Act, 1888 (51 & 52 Vict c 41)

(s) Canals (Offences) Act, 1840 (3 & 4 Vict c 50) See title RAILWAYS AND CANALS

(t) Canal Boats Acts, 1877 (40 & 41 Vict c 60), ss 1, 2, 5, 6, 10, 1884 (47 & 48 Vict c 75), ss 7, 8

(u) Chaff Outting Machines (Accidents) Act, 1897 (60 & 61 Vict c 60), s 3 See title AGRICULTURE, Vol I, p 295

(v) Elementary Education Act, 1876 (39 & 40 Vict c 79), s 56, Children's Dangerous Performances Act, 1879 (42 & 43 Vict c 34), Dangerous Performances Act, 1897 (60 & 61 Vict c 52), Betting and Loans (Infants) Act, 1892 (55 Vict c 4), ss 2, 4, Employment of Children Act, 1903 (3 Edw 7, c 45), Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), Children Act, 1908 (8 Edw 7, c 67) See titles EDUCATION, INFANTS AND CHILDREN

(w) Chimney Sweepers Regulation Act, 1864 (27 & 28 Vict c 37), ss 6, 7, Chimney Sweepers Act, 1875 (38 & 39 Vict c 70), ss 15—20, Chimney Sweepers Act, 1894 (57 & 58 Vict c 51), s 1

(x) Licensing Act, 1902 (2 Edw 7, c 28), Part III See title CLUBS, Vol IV, pp 429 *et seq*

(y) Companies (Consolidation) Act, 1908 (8 Edw 7, c. 69), s 276 See title COMPANIES, Vol V

(z) Parish Officers Act, 1793 (33 Geo 3, c 55), s 1, Canals (Offences) Act, 1840 (3 & 4 Vict c 50), ss 4, 5, Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 194, County Police Act, 1839 (2 & 3 Vict c 93), ss 12, 15 See title POLICE

(a) Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw 7, c 15), Musical Copyright Act, 1906 (6 Edw 7, c 36), Fine Arts Copyright Act, 1862 (25 & 26 Vict c 68), ss 6, 8 See title COPYRIGHT AND LITERARY PROPERTY, Vol VIII, p 169

(b) Corn Returns Act, 1882 (45 & 46 Vict c 37), s 17.

(c) Cruelty to Animals Act, 1849 (12 & 13 Vict c 92), Cruelty to Animals Act, 1854 (17 & 18 Vict c 60), Cruelty to Animals Act, 1876 (39 & 40 Vict c 77), see also Diseases of Animals Act, 1894 (57 & 58 Vict c 57), s 23, Wild Animals in Captivity Protection Act, 1900 (63 & 64 Vict c 33), s 3 See title ANIMALS, Vol I, p 409.

(d) Customs Consolidation Act, 1876 (39 & 40 Vict c 36), and amending Acts, Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 8 See title REVENUE

(e) Dogs Act, 1871 (34 & 35 Vict c 56), Dogs Act, 1906 (8 Edw. 7, c 32), Rabies Order, 1897 (No 57-78, 23rd March, 1907), Dogs Order, 1906 (No 7124, 22nd October, 1906), Dog Licences Act, 1867 (30 Vict c 5), ss 8, 9 See title ANIMALS, Vol I, p 394

(f) Licensing Acts, 1872, 1902 (35 & 36 Vict c 94, 2 Edw. 7, c 28) See also Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 58, London Hackney Carriages Act, 1843 (6 & 7 Vict c 86), s 28, Refreshment Houses Act, 1860 (23 & 24 Vict c 27), s 41, Habitual Drunkards Act, 1879 (42 & 43 Vict c 19) See title INTOXICATING LIQUORS.

(g) See title REVENUE

(h) Explosives Act, 1875 (38 & 39 Vict c 17) See title EXPLOSIVES

(i) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22) See title FACTORIES AND WORKSHOPS.

(j) Fertilisers and Feeding Stuffs Act, 1906 (6 Edw 7, c. 27) See title AGRICULTURE, Vol I, p 285.

(k) False Alarms of Fire Act, 1895 (58 & 59 Vict c 28).

**SECT. 1.**  
**Courts of**  
**Summary**  
**Jurisdiction**

drugs(*l*), foreign plate(*m*), friendly etc. societies(*n*), game(*o*), gaming(*p*), gasworks(*q*), gun licences(*r*), hawkers(*s*), highways(*t*); hops(*u*), husband and wife(*v*), indecent advertisements(*w*), industrial schools(*x*), licensed houses(*y*), juries(*z*), landlord and tenant(*a*), larceny of deer(*b*), dogs(*c*), fences etc(*d*), fish(*e*), pigeons(*f*), trees etc(*g*), libraries(*h*), lighting and watching(*i*), locomotives on highways(*j*), and motor cars(*k*), lotteries(*l*);

(*l*) Sale of Food and Drugs Acts, 1875 to 1899 (38 & 39 Vict c 63, 42 & 43 Vict c 30, 50 & 51 Vict c 29, 62 & 63 Vict c 51), see also Customs and Inland Revenue Act, 1882 (45 & 46 Vict c 41), s 6, Customs and Inland Revenue Act, 1885 (48 & 49 Vict c 51), ss 8, 9 See titles FOOD AND DRUGS, REVENUE

(*m*) Hall-marking of Foreign Plate Act, 1904 (4 Edw 7, c 6), s 1

(*n*) Friendly Societies Act, 1896 (59 & 60 Vict c 25), Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict c 26), Industrial and Provident Societies Act, 1893 (56 & 57 Vict c 39), Loan Societies Act, 1840 (3 & 4 Vict c 110) See titles *passim*

(*o*) Night Poaching Act, 1828 (9 Geo 4, c 69), Game Act, 1831 (1 & 2 Will 4, c 32), Game Licences Act, 1860 (23 & 24 Vict c 90), Larceny Act, 1861 (24 & 25 Vict c 96), s 17, Poaching Prevention Act, 1862 (25 & 26 Vict c 114), Ground Game Act, 1880 (43 & 44 Vict c 47), s 6 See title GAME

(*p*) Gaming Act, 1845 (8 & 9 Vict c 109), Betting Act, 1853 (16 & 17 Vict c 119), Betting Act, 1874 (37 Vict c 15) See title GAMING AND WAGERING

(*q*) Gasworks (Clauses Act 1847 (10 & 11 Vict c 15), Gasworks (Clauses Act, 1871 (44 & 45 Vict c 41) See title GAS

(*r*) Gun Licence Act, 1870 (33 & 34 Vict c 57), Pistols Act, 1903 (3 Edw 7, c 18).

(*s*) Hawkers Act, 1888 (51 & 52 Vict c 33) See title MARKETS AND FAIRS

(*t*) Highway Act, 1835 (5 & 6 Will 4, c 50), Highway Act, 1864 (27 & 28 Vict c 101) See title HIGHWAYS, STREETS, AND BRIDGES

(*u*) Hop (Prevention of Frauds) Act, 1866 (29 & 30 Vict c 37) See title AGRICULTURE, Vol I, p 291

(*v*) Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict c 39), Licensing Act, 1902 (2 Edw 7, c 29), s 5, Matrimonial Causes Act, 1875 (20 & 21 Vict c 85), s 21 See title HUSBAND AND WIFE

(*w*) Indecent Advertisements Act, 1889 (52 & 53 Vict c 18)

(*x*) See Children Act, 1908 (8 Edw 7, c 67), and title INFANTS AND CHILDREN

(*y*) Refreshment House Act, 1860 (23 Vict c 27), Public House Closing Act, 1864 (27 & 28 Vict c 61), Licensing Act, 1872 (35 & 36 Vict c 94), Licensing Act, 1874 (37 & 38 Vict c 49), Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw 7, c 27), Licensing Act, 1902 (2 Edw 7, c 28), Children Act, 1908 (8 Edw 7, c 67), s 120 See title INTOXICATING LIQUORS

(*z*) Juries Act, 1825 (6 Geo 4 c 50), s 45 see title JURIES

(*a*) Law of Distress Amendment Act, 1890 (53 & 54 Vict c 21), s 2 See title DISTRESS

(*b*) Larceny Act, 1861 (24 & 25 Vict c 96), s 12 See title ANIMALS, Vol I, p 371

(*c*) *Ibid*, s 18

(*d*) *Ibid*, s 34

(*e*) *Ibid*, s 24

(*f*) *Ibid*, s 23

(*g*) *Ibid*, ss 33, 36, 37.

(*h*) Libraries Offences Act, 1898 (61 & 62 Vict c 53)

(*i*) Lighting and Watching Act, 1833 (3 & 4 Will 4, c 90) s 55

(*j*) Locomotives Act, 1865 (28 & 29 Vict c 83), Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict c 77), Locomotives Act, 1898 (61 & 62 Vict c 29) See title STREET TRAFFIC

(*k*) Locomotives on Highways Act, 1896 (59 & 60 Vict c 36), Motor Car Act, 1903 (3 Edw 7, c 36) See title STREET TRAFFIC

(*l*) Gaming Act, 1802 (42 Geo 3, c 119) s 2, Lotteries Act, 1823 (4 Geo 4

lunatics (*m*); markets and fairs (*n*), marriage (*o*), masters and servants (*p*), medical practitioners (*q*), merchandise marks (*r*), merchant shipping (*s*), metal dealers (*t*), midwives (*u*), mines (*x*); money-lenders (*a*), music and dancing (*b*), obscene publications (*c*), patents and trade marks (*d*), pawnbrokers (*e*), pedlars (*f*) personation (*g*), petroleum (*h*), poison (*i*), poor law (*j*), post office (*k*), pound-

SECT 1  
Courts of  
Summary  
Jurisdiction.

c 60), s 41, Vagrancy Act, 1824 (5 Geo 4, c 83), ss 5, 21 See title GAMING AND WAGERING

(*m*) Lunacy Act, 1890 (53 Vict c 5), ss 315, 317, 322, 323, 326 See title LUNATICS AND PERSONS OF UNSOUND MIND

(*n*) Markets and Fairs Clauses Act, 1947 (10 & 11 Vict c 14), s 13 See title MARKETS AND FAIRS

(*o*) Marriage Act, 1898 (61 & 62 Vict c 58) See title HUSBAND AND WIFE

(*p*) Frauds by Workmen Acts, 1718, 1777 (22 Geo 2 c 27, 17 Geo 3, c 56), Servants' Characters Act 1792 (32 Geo 3, c 56) Truck Act, 1831 (1 & 2 Will 4, c 37), Master & Servant Act, 1813 (6 & 7 Vict c 10), Misappropriation by Servants Act, 1863 (26 & 27 Vict c 103), Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), Payment of Wages in Public Houses Prohibition Act, 1883 (46 & 47 Vict c 31), Truck Amendment Act, 1887 (50 & 51 Vict c 16), Truck Act 1896 (59 & 60 Vict c 44) Trade Disputes Act, 1906 (6 Edw 7, c 47) See titles MASTER AND SERVANT, TRADE AND TRADE UNIONS

(*q*) Medical Act, 1858 (21 & 22 Vict c 90), ss 10, 41, Dentists Act, 1878 (41 & 42 Vict c 33) ss 3, 4 See title MEDICINE AND PHARMACY

(*r*) Merchandise Marks Act, 1887 (50 & 51 Vict c 28)

(*s*) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), Seamen's Clothing Act, 1869 (32 & 33 Vict c 57) Seamen's and Soldiers' False Characters Act, 1906 (6 Edw 7, c 5) See title SHIPPING AND NAVIGATION

(*t*) Old Metal Dealers Act, 1861 (24 & 25 Vict c 110), Prevention of Crimes Act, 1871 (34 & 35 Vict c 112) s 13

(*u*) Midwives Act, 1902 (2 Edw 7, c 17)

(*x*) Coal Mines Regulation Act, 1857 (50 & 51 Vict c 58), s 61 See title MINES, MINERALS AND QUARRIES

(*a*) Money lenders Act, 1900 (63 & 64 Vict c 51) See title MONEY AND MONEY-LENDING

(*b*) Public Health Acts Amendment Act, 1890 (53 & 54 Vict c 59), s 51

(*c*) Obscene Publications Act, 1857 (20 & 21 Vict c 83)

(*d*) Patents and Designs Act, 1907 (7 Edw 7, c 20), ss 59-90 See title PATENTS AND INVENTIONS

(*e*) Pawnbrokers Act, 1872 (35 & 36 Vict c 93) See title PAWNBROKERS AND PLEDGES

(*f*) Pedlars Act, 1871 (34 & 35 Vict c 96), Pedlars Act, 1881 (44 & 45 Vict c 45) See title MARKETS AND FAIRS

(*g*) Admiralty Powers Act, 1865 (28 & 29 Vict c 121), s 8 Army Act, 1851 (44 & 45 Vict c 58), s 142, Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 17, County Police Act, 1839 (2 & 3 Vict c 93), s 15, Town Police Clauses Act, 1847 (10 & 11 Vict c 89), s 12

(*h*) Petroleum Act, 1871 (34 & 35 Vict c 105), Petroleum Act, 1879 (42 & 43 Vict c 47), Petroleum (Hawkers) Act, 1881 (44 & 45 Vict c 67)

(*i*) Poisoned Grain Prohibition Act, 1863 (26 & 27 Vict c 113), Poisoned Flesh Prohibition Act, 1964 (27 & 28 Vict c 115), Pharmacy Acts, 1868 and 1869 (31 & 32 Vict c 121, 32 & 33 Vict c 117), Drugging of Animals Act, 1876 (39 Vict c 13)

(*j*) Poor Relief Act, 1815 (55 Geo 3, c 137), s 2, Poor Law Amendment Act, 1834 (4 & 5 Will 4, c 76), ss 43, 92, 98, Poor Law Amendment Act, 1844 (7 & 8 Vict c 101), s 58, Poor Law Amendment Act, 1860 (29 & 30 Vict c 113), s 15, Pauper Inmates Discharge and Regulation Act, 1871 (34 & 35 Vict c 108), s 7, Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict c 61), s 44, Casual Poor Act, 1882 (45 & 46 Vict c 6), s 5. See title POOR LAW

(*k*) See the Post Office Act, 1908 (8 Edw 7, c 48) See title POST OFFICE

**SECT. 1.**  
**Courts of**  
**Summary**  
**Jurisdiction.**

breach (*l*) ; prevention of crimes (*m*) ; printers (*n*) ; prisons (*o*) ; property, damage to (*p*) , public health (*q*) ; railways (*r*) ; reformatory schools (*s*) , salmon and freshwater fisheries (*t*) , sea fisheries (*u*) ; shop clubs (*v*) , shop hours (*u*) , solicitors (*x*) , steam whistles (*y*) , street betting (*z*) ; Sunday observance (*u*) , swearing (*b*) , telegraphs (*c*) ; theatres (*d*) , threshing machines (*e*) , towns improvement (*f*) , towns police (*g*) , trade unions (*h*) , tramways (*i*) , uniforms (*j*) ;

(*l*) Pound breach Act, 1443 (6 & 7 Vict. c. 30) See title ANIMALS, Vol. I., p. 386

(*m*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112)

(*n*) Newspapers, Printers, and Reading Rooms Repeal Act, 1869 (32 & 33 Vict. c. 24), Corrupt and Illegal Practices Prevention Act, 1881 (46 & 47 Vict. c. 51), s. 10 See title PRESS AND PRINTING

(*o*) Prison Act, 1865 (28 & 29 Vict. c. 126), ss. 38, 39, 52 See title PRISONS

(*p*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 22, 24, 25, 41, 52, Town Gardens Protection Act, 1863 (26 & 27 Vict. c. 13), s. 3

(*q*) Public Health Act, 1875 (38 & 39 Vict. c. 54), and amending Acts See title PUBLIC HEALTH

(*r*) Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), ss. 13, 16, Railways Clauses Consolidation Act, 1815 (8 & 9 Vict. c. 20), Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 37, Regulation of Railways Act, 1868 (31 & 32 Vict. c. 110), ss. 23, 40, Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5 See title RAILWAYS AND CANALS

(*s*) See the Children Act, 1908 (8 Edw. 7, c. 67)

(*t*) Salmon and Freshwater Fishery Acts, 1861 to 1892 (21 & 25 Vict. c. 109, 26 & 27 Vict. c. 10, 28 & 29 Vict. c. 121, 33 & 34 Vict. c. 33, 36 & 37 Vict. c. 71, 39 & 40 Vict. c. 19, 34, 40 & 41 Vict. c. 65, 41 & 42 Vict. c. 39, 42 & 43 Vict. c. 26, 47 & 48 Vict. c. 11, 49 & 50 Vict. c. 20, 39, 54 & 55 Vict. c. 37 (Parts III, IV), 55 & 56 Vict. c. 50 See title FISHERIES.

(*u*) Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42), Fisheries (Oyster, Crab, and Lobster) Act, 1877, Amendment Act, 1894 (17 & 48 Vict. c. 26)

(*v*) Shop Clubs Act, 1902 (2 Edw. 7, c. 21)

(*w*) Shop Hours Acts, 1892 and 1895 (55 & 56 Vict. c. 62, 58 Vict. c. 5), Shops for Shop Assistants Act, 1890 (62 & 63 Vict. c. 21)

(*x*) Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12 See title SOLICITORS

(*y*) Steam Whistles Act, 1872 (35 & 36 Vict. c. 61)

(*z*) Street Betting Act, 1906 (6 Edw. 7, c. 43)

(*u*) Sunday Observance Act, 1625 (1 Car. 1, c. 1), Sunday Observance Act, 1877 (29 Car. 2, c. 7), Broad Act, 1836 (6 & 7 Will. 4, c. 37), s. 14, see title TIME

(*b*) Profane Oaths Act, 1745 (19 Geo. 2, c. 21)

(*c*) Telegraph Act, 1863 (26 & 27 Vict. c. 112), s. 45, Post Office Act, 1908 (8 Edw. 7, c. 48), Wireless Telegraphy Act, 1904 (1 Edw. 7, c. 24), s. 1 See title TELEGRAPHS AND TELEPHONS

(*d*) Theatres Act, 1843 (6 & 7 Vict. c. 68) See title THEATRES, MUSIC HALLS AND SHOWS

(*e*) Threshing Machines Act, 1878 (41 Vict. c. 12) See title AGRICULTURE, Vol. I., p. 295

(*f*) Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34)

(*g*) Town Police Clauses Acts, 1847 and 1889 (10 & 11 Vict. c. 89, 52 & 53 Vict. c. 14)

(*h*) Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 12 See title TRADE AND TRADE UNIONS

(*i*) Tramways Act, 1876 (33 & 34 Vict. c. 78) See title TRAMWAYS AND LIGHT RAILWAYS

(*j*) Uniforms Act 1894 (57 & 58 Vict. c. 45)

vaccination (*k*); vagrants (*l*); veterinary surgeons (*m*); water (*n*); weights and measures (*o*), wild birds (*p*)

SECT. 1.  
Courts of  
Summary  
Jurisdiction

Jurisdiction  
over indict-  
able offences.

162. There is also jurisdiction as to certain indictable offences:—

(1) In the case of young persons consenting to the justices dealing with the charge, over all indictable offences other than homicide (*q*); (2) where adults plead guilty, to charges of simple larceny, offences punishable as simple larceny, and other kindred offences (*r*); (3) where adults consent, over like offences where the value of the whole of the property the subject of the offence does not in the opinion of the court exceed 40s (*s*), and (4) trivial case of libel in newspapers (*t*)

These courts may take the examinations of persons charged with indictable offences, and commit them to prison to await their trial, or bind them over to appear at the assizes or sessions as the case may be (*u*), and may order persons to enter into recognisances and to find sureties to keep the peace and to be of good behaviour (*x*).

163 Courts of summary jurisdiction have also civil or *quasi* civil jurisdiction as to bastardy (*a*), dogs (*b*), harbours (*c*), highway rates (*d*), landlord and tenant (*e*), master and servant (*f*),

Civil juris-  
diction.

(*k*) Vaccination Acts, 1867, 1871, and 1898 (30 & 31 Vict c 81, s 32, 31 & 35 Vict c 98, s 11, 61 & 62 Vict c 49) See title POOR LAW

(*l*) Vagrancy Acts, 1824 and 1898 (5 Geo 4, c 83, 61 & 62 Vict c 39)

(*m*) Veterinary Surgeons Act, 1881 (44 & 45 Vict c 62) See title MEDICINE AND PHARMACY

(*n*) Waterworks Clauses Act, 1847 (10 & 11 Vict c 17), Waterworks Clauses Act, 1863 (26 & 27 Vict c 93), Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict c 21) See title WATER SUPPLY

(*o*) Weights and Measures Acts, 1878, 1889, and 1904 (41 & 42 Vict c 49; 52 & 53 Vict c 21, 4 Edw 7, c 26) See title WEIGHTS AND MEASURES

(*p*) Wild Birds Protection Acts, 1880 to 1904 (43 & 44 Vict c 35, 44 & 45 Vict c 51, 59 & 60 Vict c 50, 2 Edw 7, c 6, 4 Edw 7, c 4) See title ANIMALS, Vol I, p 405

(*q*) Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 11, Sched I, Summary Jurisdiction Act, 1899 (62 & 63 Vict c 22), s 2, and see title CRIMINAL LAW AND PROCEDURE, p 268, *post*

(*r*) See title CRIMINAL LAW AND PROCEDURE, p 269, *post*

(*s*) Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), ss 12, 13, 14, Sched I, Summary Jurisdiction Act, 1899 (62 & 63 Vict c 22), s 1

(*t*) Newspaper Label and Registration Act, 1881 (44 & 45 Vict c 60), s 5 See title LABEL AND SLANDER

(*u*) Criminal Law Act, 1826 (7 Geo 4, c 64), s 1, Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 21

(*x*) Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 25

(*a*) Bastardy Act, 1845 (8 & 9 Vict c 10), and amending Acts See title BASTARDY, Vol II, p 413

(*b*) Dogs Act, 1906 (6 Edw 7, c 32). See title ANIMALS, Vol I, p 394.

(*c*) Harbour, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict c 27) ss 74, 76 See titles SHIPPING AND NAVIGATION, WATERS AND WATER-COURSES

(*d*) Highway Act, 1835 (5 & 6 Will 4, c 50)

(*e*) Small Tenements Recovery Act, 1838 (1 & 2 Vict c 74). See title LANDLORD AND TENANT

(*f*) Employers and Workmen Act, 1875 (38 & 39 Vict c 90) See title MASTER AND SERVANT

**SECT 1**  
**Courts of**  
**Summary**  
**Jurisdiction.**

**Detinue**

**Jurisdiction**  
**of single**  
**justice**

under the Lands Clauses Act (*g*), licensing (*h*), lunacy (*i*), poor (*k*)

In the Metropolitan Police District there is also jurisdiction to order the return of goods detained from the owner not exceeding the value of £15, and to enforce the order by committal to prison (*l*)

**164** One justice of the peace sitting alone has jurisdiction to receive any information or complaint, and to grant a summons or warrant thereon, and to issue a summons or warrant for the attendance of witnesses, and to do all other necessary acts and matters preliminary to the hearing (*a*) He has also jurisdiction, when sitting alone in a petty sessional court-house, to hear and determine charges under particular statutes (*b*), but in such cases he may not impose a punishment exceeding imprisonment for fourteen days or a fine of 20s (*c*)

**SECT 2—Quarter and General Sessions**

**Quarter**  
**sessions**

**165** Quarter sessions are held in the case of counties before the justices in quarter sessions, or in boroughs having a separate court of quarter sessions before the recorder (*d*)

**SUB SECT 1—Constitution of Quarter and General Sessions.**

**(1) In Counties**

**Sittings and**  
**duties**

**166.** The commission of the peace, in the case of counties, assigns to the justices and any two or more of them (*e*) "to inquire the truth more fully by the oath of good and lawful men of the county, by whom the truth of the matter shall be better known, of all and all manner of crimes, trespasses, and all and singular other offences of which the justices of our peace may or ought lawfully to inquire and to hear and determine all and singular the crimes

(*g*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict c 18) See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol VI, pp 77, 163, 173

(*h*) Licensing Act, 1872 (35 & 36 Vict c 94) etc See title INTOXICATING LIQUORS

(*i*) Lunacy Act, 1890 (53 Vict c 5) See title LUNATICS AND PERSONS OF UNSOUND MIND

(*k*) Poor Relief Act, 1819 (59 Geo 3, c 12) etc, Distress for Rates Act, 1849 (12 & 13 Vict 14) etc See titles POOR LAW, RATES AND RATING

(*l*) Metropolitan Police Courts Act, 1839 (2 & 3 Vict c 71), s 40

(*a*) Summary Jurisdiction Act, 1818 (11 & 12 Vict c 43), s 29

(*b*) Broad Act, 1836 (6 & 7 Will 4, c 37), Places of Religious Worship Act, 1812 (52 Geo 3 c 163), Highway Act, 1835 (5 & 6 Will 4, c 50), Larceny Act, 1861 (24 & 25 Vict c 96), ss 12, 15, 23, 24, 33, 36, Malicious Damage Act, 1861 (24 & 25 Vict c 97), ss 22, 24, 25, 37, 41, 52, Railway Regulation Act, 1810 (3 & 4 Vict c 97), ss 13, 16, Profane Oaths Act, 1745 (19 Geo 2, c 21), Vagrancy Act, 1824 (5 Geo 4, c 83)

(*c*) Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 20 (7)

(*d*) See title MAGISTRATES, and also as to London and Southwark, pp 177, 203, *post*

(*e*) Formerly there was a provision in the commission, "of whom A B etc, shall be one" These specially named justices were called those of the quorum, Where a statute specially requires an act to be done before two or more justices, of whom one must be of the quorum, no Act etc can be impeached, set aside, or vacated on the ground that it does not express that one of the justices is of the quorum (Justices Act, 1753 (26 Geo. 2, c 27))



SECT. 2.  
Quarter  
Sessions.

and offences and trespasses aforesaid " Further, justices are directed to make their sessions four times by the year and more often if need be (*f*). The sessions are directed to be held in the first week after 11th October, 28th December, 31st March, and 24th June respectively (*g*)

All the sessions held under this power are general sessions of the peace, but the four sessions held at the prescribed times are properly called general quarter sessions (*h*)

167 Two justices are necessary to constitute a general sessions of the peace, and if two are not present, there is no power to adjourn the sessions legally Thus, if two justices are not present the power to hold a quarter sessions for that quarter is lost, although a general sessions can be held before the next appointed time for quarter sessions (*i*)

Constitution  
of general  
sessions

General sessions, as distinguished from general quarter sessions, are in practice never held, except in the case of the county of London (*k*), the practice being, in cases where more than four sessions in the year are requisite, to adjourn the general quarter sessions (*l*) This is done because the jurisdiction of general quarter sessions is wider than that of other general sessions of the peace (*m*)

General quarter sessions and general sessions of the peace are inferior courts of record (*n*)

(*f*) Stat (1414), 2 Hen 5 stat 1, c 4 By this Act the quarter sessions were directed to be held in the first week after the feast of St Michael, the Epiphany, the claus (i.e., close or conclusion, New English Dictionary, Vol II, p 470) of Easter, and the translation of St Thomas respectively In case not more than five days before the day for holding a court of quarter sessions it appears to the clerk of the peace that there is no business to be transacted which requires the attendance of jurors, notice may be given dispensing with the attendance of jurors (Assizes and Quarter Sessions Act, 1908 (8 Edw 7, c 41), s 1), and in such a case it is not necessary to hold the court of quarter sessions unless there is any business, not requiring the attendance of jurors, to be transacted by the court (*ibid*, s 2) And see Order in Council of 28th June, 1909 (*London Gazette*, 2nd July, 1909)

(*g*) Law Terms Act, 1830 (11 Geo 4 & 1 Will 4, c 70), s 35 By the Assizes and Quarter Sessions Act, 1908 (8 Edw 7, c 41), s. 3, the time may be altered so as to avoid clashing with the assizes, so that the sessions are held not earlier than fourteen days before, or later than fourteen days after, the prescribed week

(*h*) "It seems the better opinion, that the quarter sessions are a species only of general sessions, and that such sessions are properly called general quarter sessions, which are holden in the four quarters of the year, in pursuance of the above-mentioned statute of (1414) 2 Hen 5, stat. 1, c 4, and that any other sessions holden at any other time for the general execution of the authority of justices of the peace, which by the above-mentioned statute, justices of the peace are authorised to hold oftener than at the time therein specified, if need be, may be properly called general sessions" (2 Hawk P C, c 8, s 47)

(*i*) *R v Polstead (Inhabitants)* (1747), 2 Stra 1263, *R v West Torrington (Inhabitants)* (1749), Burr S C 293, *R v Westington* (1750), 2 Bott's Poor Laws, pl 881, *R v Carmarthen Justices* (1821), 4 B & Ald 291, *R v Mullancy* (1833), 6 C & P 96, 100, *R v Middlesex Justices* (1834), 5 B & Ad 1113

(*k*) See Middlesex Sessions Act, 1844 (7 & 8 Vict c 71), ss 8, 9, Local Government Act, 1888 (51 & 52 Vict. c 41), s 42

(*l*) Archbold, Quarter Sessions, 6th ed., p 3.

(*m*) 2 Hale, P O 49

(*n*) 3 Hawk P C. Bk 2, c. 8, 7th ed by Leach (1793), p 86. *R v.*

**SECT. 2.**  
**Quarter**  
**Sessions**

Commission  
of the peace

**168.** A commission of the peace may be granted for a whole county, or for a riding or other division of the same (*o*). Coroners (*p*), chairmen of county councils (*q*), and chairmen of district councils, including mayors of boroughs other than county boroughs (*r*), are *ex officio* justices for the county. A sheriff is disqualified from acting as a justice during his term of office (*s*).

(2) *In Boroughs.*

Borough  
sessions

**169** In boroughs under the Municipal Corporations Act, 1882 (*t*), which have the franchise of a separate court of quarter sessions, the recorder is the sole judge of the court (*u*), and the borough justices are not to act as justices at any court of gaol delivery or quarter sessions (*a*)

The recorder is to hold a court of quarter sessions in and for the borough once in every quarter of a year, or oftener, if and as he thinks fit or the Secretary of State directs (*b*). The recorder may in the case of sickness or unavoidable absence appoint, by writing signed by him, a barrister of five years' standing to act as deputy recorder at the quarter sessions then next ensuing, or then being held, but not longer or otherwise (*c*). If the recorder is by reason of illness, absence, or other cause, incapable of appointing a deputy, the Secretary of State may do so (*d*).

Where necessary the recorder may appoint a properly qualified assistant recorder (*e*).

In the absence of the recorder and deputy recorder, the mayor should open the court and immediately adjourn it and all recognisances to a future day, and so from time to time (*f*).

The quarter sessions of a borough is a court of record (*g*)

*Clement* (1821), 4 B & Ald 218, *per* HOLLOLD, J, at p 213, *Re Pater* (1804), 33 L. J. (M. C.) 142

(*o*) & *q*, the three Ridings of Yorkshire, the parts of Lindsey, Kesteven, and Holland in Lincolnshire the Island of Ely, etc.

(*p*) See *Davis v Pembrokehire Justices* (1881), 7 Q. B. D. 513, and title CORONERS, Vol. VIII, p. 251

(*q*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (*δ*)

(*r*) Local Government Act 1894 (56 & 57 Vict. c. 73), ss. 21, 22

(*s*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 17, and see title SHERIFFS AND BAILIFFS. Formerly, there was a property qualification for a justice of the peace, but this was removed by the Justices of the Peace Act, 1906 (6 Edw. 7, c. 16). This Act only requires the justice to be of full age and to reside within the county or within seven miles thereof (*s* 2). See, further, title MAGISTRATES.

(*t*) Apparently there are now no boroughs having any jurisdiction, except those under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), except the City of London. The Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), destroyed all the boroughs reported on, which were not within the Act of 1882. Hemel Hempstead, which seems to have escaped the notice of the commissioners on whose report the Act of 1835 (5 & 6 Will. 4, c. 76) was founded, obtained a new charter in 1898.

(*u*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 165 (2).

(*a*) *Ibid.*, s. 158 (1).

(*b*) *Ibid.*, s. 165 (1).

(*c*) *Ibid.*, s. 166 (1).

(*d*) Records, Stipendiary Magistrates, and Clerks of the Peace Act, 1906 (6 Edw. 7, c. 46), s. 1 (4).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), 168.

(*f*) *Ibid.*, s. 167.

(*g*) *Ibid.*, s. 165 (3).

SUB-SECT. 2.—*Jurisdiction.*(1) *Criminal*SECT. 2.  
Quarter  
Sessions.Original  
criminal  
jurisdiction  
of quarter  
sessions.

**170.** The criminal jurisdiction of quarter sessions is both original and appellate. The original jurisdiction is to hear and determine at quarter sessions or any adjournment thereof, or at general sessions, an indictment, information or presentment for any offence committed within the county, or justiceable therein, with certain exceptions (*h*).

The court has also jurisdiction to sentence incorrigible rogues who are sent from courts of petty sessions (*i*).

**171.** The appellate jurisdiction lies from courts of summary jurisdiction, and arises where it is given by some particular statute, and from a conviction and sentence ordering imprisonment without the option of a fine (*k*), except where the conviction is under the Summary Jurisdiction Act, 1879 (*l*). There is no appeal where a person has pleaded guilty or has elected to be tried summarily for an indictable offence (*m*).

Appellate  
criminal  
jurisdiction.

The criminal jurisdiction of borough quarter sessions is co-extensive with that of county quarter sessions (*a*).

(2) *Civil.*

**172.** The present original civil jurisdiction of quarter sessions is now restricted (*b*) to the following matters: (1) Licensing—the refusal of an existing licence, on any ground other than that the licensed premises have been ill-conducted or are structurally deficient or unsuitable, or on grounds connected with the character or fitness of the proposed licensee, or on the ground that the renewal would be void (*c*), to impose a rate of charges on licences for the purpose of compensation for licences absorbed (*d*), to confirm new licences and any other powers of the former county licensing committee, to attach conditions to the grant of a licence, or to grant a licence for a term of years (*e*). This jurisdiction belongs to county quarter sessions, but in the case of county boroughs is exercisable by the whole body of the justices acting in and for the borough (*f*). (2) Highways—orders for diverting or closing highways made on the view and certificate of justices not appealed against (*g*). (3) Prisons—to appoint a visiting committee of

Original  
civil juris-  
diction.

(*h*) For the crimes and offences that are not triable at quarter sessions, see title CRIMINAL LAW AND PROCEDURE, p. 225, *post*.

(*i*) Vagrancy Act 1824 (3 Geo. 4, c. 83), s. 5, and title MAGISTRATES.

(*k*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 19.

(*l*) *Ibid*.

(*m*) *R v London Justices, Ex parte Lambert*, [1892] 1 Q. B. 664.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 165 (3).

(*b*) A large part of the civil jurisdiction of quarter sessions was transferred to the county council by the Local Government Act, 1888 (51 & 52 Vict. c. 41), see title LOCAL GOVERNMENT.

(*c*) Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1 (1).

(*d*) *Ibid*, s. 3.

(*e*) *Ibid*, s. 4.

(*f*) *Ibid*, s. 8.

(*g*) Highway Act, 1838 (5 & 6 Will. 4, c. 50), ss. 85—91.

**SECT. 2.**  
**Quarter**  
**Sessions**

justices (*h*) (4) Clergy discipline—to elect triennially five justices on the panel of assessors to try criminal clerks (*i*) (5) Lunatics—to select justices to exercise the judicial authority as to lunatics under the Lunacy Act, 1890 (*j*) (6) Outside places which are within the immediate jurisdiction of the Lunacy Commissioners (*k*) to select three justices and one or more medical practitioners to visit licensed houses for lunatics (*l*), and to license houses for the reception of lunatics (*m*)

**Appellate**  
**civil juris-**  
**diction.**

**173.** The appellate civil jurisdiction is extensive. The most usual subjects of appeals are bastardy orders (*n*), rating appeals (*o*), settlement of paupers and other poor law matters (*p*), appeals from orders to divert or close highways (*q*), refusal to renew or transfer a licence (*a*), and against the appointment of overseers (*b*)

**SECT. 3—Special Sessions.**

**Special**  
**sessions.**

**174** Special sessions are meetings of justices convened for the purpose of executing some statutory authority, which is exercisable by justices out of quarter sessions (*c*). Special sessions are held for special sessional divisions, which are fixed and may be altered from time to time by quarter sessions (*d*). Notice of the special sessions must be given to all the justices who are usually resident or acting as such within the boundaries of the division (*e*).

In some cases the times for holding special sessions for particular purposes are prescribed by statute. Special sessions for appointing overseers in urban parishes must be held on 25th March, or within fourteen days after (*f*), licensing (or brewster) sessions must be held within the first fourteen days of February, and every adjournment

(*h*) Prison Act, 1877 (40 & 41 Vict. c. 21), s. 13

(*i*) Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32)

(*j*) Lunacy Act, 1890 (53 Vict. c. 5), ss. 9, 10

(*k*) *Ibid.*, s. 208, Sched. III, namely, the cities of London and Westminster, the counties of London and Middlesex, and Barnes, Kew Green etc., and every place within seven miles from any part of the cities of London and Westminster, or of the borough of Southwark

(*l*) *Ibid.*, s. 177

(*m*) *Ibid.* ss. 207–221

(*n*) See title **BASTARDY**, Vol. II, p. 426.

(*o*) See title **RATES AND RATING**

(*p*) See title **POOR LAW**

(*q*) See title **HIGHWAYS, STREETS AND BRIDGES**

(*a*) See title **INTOXICATING LIQUORS**

(*b*) See title **POOR LAW**

(*c*) See Wharton's Law Lexicon *sub voce* **Sessions**

(*d*) Division of Counties Act, 1825 (9 Geo. 4, c. 43), Petty Sessional Divisions Act, 1836 (6 & 7 Will. 4, c. 12)

(*e*) "In all cases in which special sessions are required to be holden for any division of any county or place if notice of the intended holding of such special sessions be signed by any one justice of the peace usually acting within such division, and if a copy of such notice be sent by post a reasonable time before the day on which such sessions are to be holden addressed to each justice of the peace resident and usually acting within such division, at his residence in such division, such notice shall be deemed to have been duly given to or served on each such justice of the peace, any law or custom to the contrary notwithstanding" (County Rates Act, 1844 (7 & 8 Vict. c. 33), s. 7).

(*f*) Poor Law (Overseers) Act, 1814 (54 Geo. 3, c. 91)

thereof must be held within one month of the date on which the sessions were held (*g*) Special sessions, to fix not less than eight nor more than twelve days for the holding of special sessions for highway purposes, must be held within fourteen days after 20th March (*h*).

SECT. 2.

Sessions.

Special sessions may not be held on premises licensed for the sale of intoxicating liquors (*i*).

There is no general statutory power to adjourn special sessions (except the general annual licensing meeting), but the hearing of any matter may be adjourned. Two justices must be present to constitute special sessions

**175** The jurisdiction of special sessions is entirely statutory It includes highway purposes (*k*) and appointment of surveyors of highways (*l*), rating appeals (*m*), the general annual licensing meeting (*n*) (which also grants billiard licences) (*o*), sessions for the transfer of licences for the sale of intoxicating liquors (*p*) and for billiards (*q*), and the appointment of overseers in urban parishes (*r*). Jurisdiction

In boroughs having a separate commission of the peace there is also jurisdiction to grant licences for stage plays (*s*)

#### SECT. 4—*Courts of Gaol Delivery and Oyer and Terminer*

**176** Courts of gaol delivery and oyer and terminer are held at the assizes when criminal business is taken (*t*) These courts are now part of the King's Bench Division of the High Court of Justice (*a*). Assizes

#### SECT. 5—*The Central Criminal Court*

##### SUB-SECT. 1—*Constitution*

**177** The Central Criminal Court was constituted in 1834 (*b*), and took the place of the former sessions at the Old Bailey which had been held from very early times under special commissions of Constitution of Central Criminal Court

(*g*) Licensing Act, 1902 (2 Edw 7, c 28), s 14 (1)

(*h*) Highway Act, 1835 (5 & 6 Will 4, c 50), s 45

(*i*) Licensing Act, 1902 (2 Edw 7, c 28), s 21

(*k*) Highway Act, 1835 (5 & 6 Will 4, c 50), s 45, see title HIGHWAYS, STREETS AND BRIDGES

(*l*) *Ibid*, s 11, see title HIGHWAYS, STREETS AND BRIDGES

(*m*) Parochial Assessments Act, 1836 (6 & 7 Will 4, c 96), s 6, see title RATES AND RATING

(*n*) Alehouse Act, 1828 (9 Geo 4, c 61), s 1, see title INTOXICATING LIQUORS

(*o*) Gaming Act, 1845 (8 & 9 Vict c 109), s 10

(*p*) Alehouse Act, 1828 (9 Geo 4, c 61), ss 9, 12, 14, Licensing Act, 1842 (5 & 6 Vict c 44), s 1, Wine and Beerhouse Act Amendment Act, 1870 (33 & 34 Vict. c 29), s 4 (4), (*q*) Licensing Act, 1872 (35 & 36 Vict. c 94), ss 40, 70, Licensing Act, 1902 (2 Ldw 7, c 28), s 16 See title INTOXICATING LIQUORS.

(*q*) Gaming Act, 1845 (8 & 9 Vict c 109), s 10

(*r*) Poor Relief Act, 1601 (43 Eliz c 2), ss 1, 9, 10, Poor Law (Overseers) Act, 1814 (54 Geo 3, c 91)

(*s*) Theatres Act, 1843 (6 & 7 Vict c 68), s 5, Local Government Act, 1888 (51 & 52 Vict. c 41), s 7 (a). See title THEATRES ETC

(*t*) See p 72, *ante*; and title CRIMINAL LAW AND PROCEDURE, p 206, *post*

(*a*) Judicature Act, 1873 (36 & 37 Vict c 66), ss 16, 34

(*b*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c 36).

**SECT. 5.** gaol delivery for Newgate and of oyer and terminer for the city of London and the county of Middlesex (c).

**The Central Criminal Court.**

The court sits under a general commission of gaol delivery and oyer and terminer, and has power and jurisdiction to proceed on the commission until it is renewed (d). The court is a branch of the High Court of Justice (e).

#### SUB-SECT 2.—*Jurisdiction*

**Jurisdiction**

**178.** The jurisdiction of the Central Criminal Court extends over all treasons, murders, felonies, and misdemeanours committed within the city of London and county of Middlesex (f) and the county of London (g), and also so much of the county of Essex as is within the parishes of Barking, East Ham, West Ham, Little Ilford, Low Layton, Walthamstow, Wanstead St Mary, Woodford and Chingford, the hamlet of Mottingham, in the county of Kent, and so much of the county of Surrey as is within the parishes of Barnes, Merton, Mortlake, Wimbledon, Kew and Richmond (h). This district is to be taken as one county for the purpose of venue, which is to be laid as "Central Criminal Court to wit" (i)

**Venue.**

His Majesty has power by Order in Council to extend the district of the Central Criminal Court in the months of November, December and January (k), and March, April and May (l), to any neighbouring county or part of a county mentioned in the order

**Offences committed on the high seas**

**179** The Central Criminal Court has also jurisdiction to hear and determine any offences committed or alleged to be committed on the high seas or elsewhere within the jurisdiction of the Admiralty of England (m), and also murders or manslaughters of persons subject to military law alleged to be committed by persons subject to such law (n).

**Special jurisdiction**

**180** If the King's Bench Division make an order to that effect, the Central Criminal Court is to try any particular offence committed outside the jurisdiction of the court, whether the indictment

(c) The Secretaries of State and the Attorney- and Solicitor- General were included in the commissions. Sentences of death had to be reported to the King until the Central Criminal Court Act, 1837 (7 Will 4 & 1 Vict. c. 77). Under a charter of Henry I the citizens of London were empowered to have their own justices to hold pleas of the Crown, and no citizen could be impleaded on a plea of the Crown except in the City Court of Record (Pulling's Laws and Customs of London, 209, note). Under the Charter of Edward III. (1327) the mayor was constituted a justice of gaol delivery.

(d) Central Criminal Court Act, 1834 (4 & 5 Will 4, c. 36), s. 2

(e) Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 29, *R v. Parke*, [1903] 2 K. B. 432, at p. 439

(f) *Ibid.*, s. 2.

(g) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (1)

(h) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 2.

(i) *Ibid.*, s. 3

(k) Winter Assizes Act, 1876 (39 & 40 Vict. c. 57), s. 5.

(l) Spring Assizes Act, 1879 (42 & 43 Vict. c. 1), s. 2.

(m) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22. The effect of this enactment is to give to the court all the criminal jurisdiction of the admiralty. Since the passing of the Act no admiralty sessions have been held.

(n) Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 65), Central Criminal Court (Prisons) Act, 1861 (44 & 45 Vict. c. 64), s. 2

has been removed into the King's Bench Division of the High Court or not (o)

The court has also jurisdiction to try indictments under the Corrupt Practices Act, 1883 (p), which have been instituted in or removed into the High Court, if, on the suggestion of the Attorney-General, the High Court shall so order (q).

SECT. 4.  
The Central  
Criminal  
Court.

181. The jurisdiction of the Central Criminal Court has in practice superseded the criminal jurisdiction of the quarter sessions for the city of London and of those for the borough of Southwark, and all indictments found in the city and borough are tried at the Old Bailey (r)

City of  
London  
Quarter  
sessions.

#### SUB-SECT. 3.—*Judges.*

182 The persons to be named in the commission are the Lord Mayor of the city of London, the Lord Chancellor or Lord Keeper of the Great Seal, all the judges of the King's Bench Division, the Dean of the Arches, the aldermen of the city of London, the Recorder, the Common Serjeant, the judges of the City of London Court (a), and any person who has been Lord Chancellor, Lord Keeper, or a judge of the King's Bench Division, together with such others as His Majesty shall name therein (b).

The com-  
missioners.

183 In practice the Recorder and Common Serjeant sit as judges of the court, assisted, if necessary, by one or both of the judges of the City of London Court. During the sittings a judge of the King's Bench Division, according to a rota, attends to try charges of murder and other serious crimes. The lord mayor, although in theory the first commissioner, takes no part in the proceedings, but the lord mayor or one of the aldermen must be in the building to form a quorum when only one judicial commissioner is sitting (c).

The judges.

#### SUB-SECT. 4.—*Sittings.*

184 The court is directed to sit at least twelve times in the year (and oftener if need be) (d), at times to be directed by four or more of the judges of the High Court (e). In practice there are twelve sessions. The court does not sit in the month of August. The sessions usually begin on a Tuesday, but sometimes on a Monday.

Sittings.

#### SUB-SECT. 5.—*Officers*

185. The officers of the Central Criminal Court are the clerk of the court, with a deputy, who is also the first clerk of arraigns, a second and third clerk of arraigns, a clerk of indictments, with an

Officers of  
the court.

(o) Central Criminal Court Act, 1856 (19 & 20 Vict. c. 16), ss. 1—3, 16, 17.

(p) 46 & 47 Vict. c. 51

(q) *Ibid.*, s. 50

(r) See pp. 177, 203, *post*

(a) See title COUNTY COURTS, Vol. VIII., p. 415.

(b) Central Criminal Court Act, 1834 (4 & 5 Vict. c. 36), s. 1.

(c) *Ibid.*, s. 2

(d) *Ibid.*, s. 15

(e) Judicature Act, 1881 (44 & 45 Vict. c. 66), s. 18.

**SECT 5**  
**The Central**  
**Criminal**  
**Court**

assistant, and a staff of clerks. The duties of these officers are similar to those of the clerks of assize, clerks of assizes etc on the circuit. (f)

**SECT. 6.—The Court of the Admiral of England.**

**Jurisdiction**  
**of the**  
**Admiral of**  
**England**

**186** The territorial limits of the jurisdiction of the Admiral of England are the seas or any other haven, river, or creek or place, where the admiral or admirals have or pretend to have power, authority or jurisdiction (g). But places within the bodies of counties as well by land as by water are excluded, except as to homicide or mayhem done in great ships, being and hovering in the main stream of great rivers only beneath the bridges of the same rivers nigh to the sea, and in none other places of the same rivers (h). In some old printed copies of the statutes the word "points" (i.e., points) occurs instead of "ponts" (bridges), but ponts appears to be the correct reading (i).

The sole jurisdiction to try treasons, piracies, felonies, robberies, murders, confederacies, and other offences committed on the high seas or elsewhere within the jurisdiction of the Admiral of England was formerly exercised under a commission under the Great Seal directed to the Admiral, his deputies and others, empowering them to try the same according to the common law as if they had been committed within the realm (k). In the case of the Cinque Ports, however, the commission was to be directed to the lord warden (l).

Concurrent jurisdiction, however, was given in 1835 (m) to the Central Criminal Court (n), and in 1844 to the courts of oyer and terminer and gaol delivery (o). Since the passing of those Acts no admiralty sessions have been held (p).

**SECT 7—Special Commissions**

**Special**  
**commissions**

**187** In case a speedy trial of certain offences is necessary the Crown may issue a special commission of oyer and terminer and gaol delivery to particular judges of the King's Bench Division to hear and determine the trial of such offences. In the case of extortion and other misdemeanour being charged against the Governor-General of India, the Lieutenant-Governor, the chief or other justices of the High Courts and other public officers in India, the trial may be had before a special commission consisting of four peers chosen by lot, after thirteen challenges have been exhausted, from a list of twenty-six peers chosen by the House at the commencement of each session, and six members of the House of Commons, chosen by lot after twenty challenges are exhausted, from a list of forty

- ) See p 73, ante
- ) Offences at Sea Act, 1536 (28 Hen 8, c 15)
- ) 15 Ric 2 c 3
- ) See Moore (K. B.), 892, *Leigh v Burley* (1609), Owen, 122
- ) Offences at Sea Act, 1536 (28 Hen. 8, c 15)
- ) *Ibid.*, s. 5. See p 127, post
- ) Central Criminal Court Act, 1834 (4 & 5 Will 4, c 36), s 22.
- ) Admiralty Offences Act, 1844 (7 & 8 Vict c 2), ss. 1, 2
- ) See p 87, ante
- ) See title ADMIRALTY, Vol. I, p 59.



members chosen by the House, together with three judges of the King's Bench Division (q)

SECT 7  
Special  
Com-  
missions

Default of  
justices and  
others

**188** A statute of 1414 (r) provides that in case of default on the part of justices of the peace, justices of assize, the sheriff or the under-sheriff, to properly execute their duties in case of riots, assemblies, and routs (s), a commission under the Great Seal shall issue to inquire with a jury (to be summoned by the coroner (t) if the sheriff is in default) into the riot, assembly, or rout, and into the default of the justices of the peace, justices of assize, sheriff, or under-sheriff, and to return the inquest into the Chancery (u)

## SECT 8 — *The Court of Criminal Appeal.*

### SUB-SECT 1 — *Constitution and Jurisdiction*

**189.** The Court of Criminal Appeal was constituted in 1907 (x) as a superior court of record (y), and superseded the former Court of Crown Cases Reserved (a) and the proceedings in the King's Bench Division on writs of error (b) from courts of assize or from the Central Criminal Court

Court of  
Criminal  
Appeal

The Court has jurisdiction to entertain appeals by persons convicted on indictments, criminal informations, coroners' inquisitions, and by persons dealt with at quarter sessions under the Vagrancy Act, 1824 (c), as incorrigible rogues (d) — (1) on any ground of appeal which involves a question of law alone, (2) by leave of the court or on a certificate from the judge who tried the case on any ground of appeal which involves a question of fact alone, or a question of mixed fact and law, or any other ground which appears to the court to be sufficient, (3) with the leave of the Court of Criminal Appeal against the sentence passed on conviction, unless the sentence is one fixed by law (d)

The court has the same power to deal with a recommendation for an expulsion order against an alien as it has with sentences, and also power to make such recommendations (e)

(y) East India Company Act 1781 (21 Geo 3, sess 2, c 20), ss 64 - 83, East India Company Act, 1786 (26 Geo 3, c 57)

(r) 2 Hen 5, stat 1, c 8

(s) Under 13 Hen 4, c 7

(t) See title CORONERS, Vol VIII, p 218

(u) See 4 Co Inst 184

(x) Criminal Appeal Act, 1907 (7 Edw 7, c 23) For the law governing appeals and the procedure of the Court, see title CRIMINAL LAW AND PROCEDURE, p 432, *post*

(y) *Ibid*, s 1 (7)

(a) Under the Crown Cases Act, 1848 (11 & 12 Vict c 78), the judge at a trial under a commission of oyer and terminer or of gaol delivery, or the justice at quarter sessions, had a discretion to reserve any point of law. Such a point of law was argued before a court consisting of five or more judges of the High Court, of whom the Lord Chief Justice was to be one (except in case of his being prevented by illness or otherwise from attending (Judicature Act, 1881 (44 & 46 Vict c 68), s 15)

(b) Writs of error are abolished by the Criminal Appeal Act, 1907 (7 Edw 7, c 23), ss 20, 23 (3), in the case of persons convicted after 18th April, 1908

(c) 5 Geo 4, c 83

(d) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (2), but only as to sentence (*R v Brown* (1908), 1 Cr App Rep 85, *R v Johnson*, [1909] 1 K B 449, O C A.

(e) *Ibid*, s 21, and see title ALIENS, Vol I, p 323.

**SECT 8.**  
**The Court**  
**of Criminal**  
**Appeal**

The court has not jurisdiction to deal with convictions on indictments at common law for the non-repair or obstruction of highways (*f*), nor with convictions of peers or peeresses, or other persons claiming the privilege of peerage convicted of any offence not now lawfully triable by a court of assize (*g*). On an appeal the court has no jurisdiction to order a new trial (*h*), but if a judge should reserve a case for the opinion of the court under the jurisdiction transferred from the Court of Crown Cases Reserved, the court may possibly have power to grant a *venue de novo* (*i*).

**SUB-SECT 2 —Judges andittings.**

**Constitution**  
**of the**  
**court**

**190.** The Lord Chief Justice of England and all the puisne judges of the King's Bench Division are the judges of the court (*k*) The court as duly constituted, consists of not less than three judges and of an uneven number of judges The court, if the Lord Chief Justice so directs, may sit in two or more divisions (*l*) The court sits in London, except when the Lord Chief Justice gives a special direction that it shall sit elsewhere (*l*) The Lord Chief Justice, or in his absence the senior judge, presides (*m*) The determination of appeals is by the majority of the judges sitting (*n*)

There is only one judgment, pronounced by the president or such other member of the court hearing the case as the president directs, except in the case of questions of law where, in the opinion of the court, it is convenient that separate judgments should be pronounced (*o*)

**Power to**  
**make rules**

**191** The Lord Chief Justice and the judges of the court, or any three of such judges, have power, subject to the approval of the Lord Chancellor, to make rules of court (*p*), with the advice and

(*f*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (3) The appeal in such cases is as if the conviction were a verdict in a civil action tried at assizes (*ibid*).

(*g*) *Ibid*, s 20 (2)

(*h*) *R v Dyson*, [1908] 2 K R 454, C C A

(*i*) *R v Feardon* (1861), L & Ca 81, C O R This case appears to be the only reported instance of a *venue de novo* being granted by the Court of Crown Cases Reserved The jurisdiction of the King's Bench Division to grant a *venue de novo* on a rule *mis* does not seem to be affected by the Act.

(*k*) By the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s. 1 (1), eight judges of the King's Bench Division appointed by the Lord Chief Justice with the consent of the Lord Chancellor, for such period as he thinks desirable in each case, were to be judges of the court, but by the Criminal Appeal (Amendment) Act, 1908 (8 Edw 7, c 46), s 1, all the judges of the King's Bench Division were substituted

(*l*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s. 1 (2).

(*m*) *Ibid*, s. 1 (3)

(*n*) *Ibid*, s. 1 (4).

(*o*) *Ibid*, s. 1 (5)

(*p*) *Ibid*, s 18 (1). Rules of court have been made under this power as follows:—Criminal Appeal Rules, 1908, dated 17th March, 1908 (Statutory Rules and Orders, 1908, No 227, L 6), Additional Rules, dated 27th March, 1908 (Statutory Rules and Orders, 1908, 277, L 10). The rules deal with. Interpretation and forms, rr 1—3, notices of appeal, r 4, shorthand writers and transcript of notes, r 5, certificate of judge under s. 3, r 6, appeals where a fine only has been inflicted, r 7, custody of exhibits used at a trial, r 8; orders of restitution, rr. 9—12, certificates of conviction, r 13, notes and reports of

SECT. 8.  
The Court  
of Criminal  
Appeal.

assistance of a committee (g). In case the rules affect the governor or other officer of a prison, or any officer having the custody of an appellant, they must also be approved by the Secretary of State. The rules may regulate generally the practice and procedure of the court and the officers of any court before whom an appellant has been convicted (a). Rules are to be laid before Parliament forthwith, and if either House within the next thirty days on which the House has sat presents an address praying that the rule may be annulled, His Majesty in Council may annul the rule, without prejudice, however, to the validity of anything previously done thereunder (b).

192 In cases where the grounds of appeal involve a question of law only, the court may direct that a case be stated (c) in the same manner as was directed by the Crown Cases Act, 1848 (d). If the judge at the trial consents to state a case for the opinion of the court, the procedure under the Crown Cases Act, 1848 (e), will be followed. The court has power to hear a case summarily if the registrar is of opinion that the notice of appeal on grounds of law alone does not show any substantial ground of appeal. In such a case, if the court considers that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, the appeal may be dismissed summarily (f).

Stating a  
case.

SUB-SECT. 3—Officers

193. The master of the Crown Office is registrar of the Court of Criminal Appeal (g).

registrar

The duties of the registrar are to take the necessary steps for

judge, rr 14—16, notice of appeal, time for appealing, abandonment of appeal, rr 17—24, proceedings before a single judge, r 25, proceedings under Crown Cases Act, 1848, r 26, duties of Director of Criminal Prosecutions, rr 27, 28, bail, rr 29, 31, inquiry as to means of appellant, r 30, attendance of warders, r 31, documents, r 32, exhibits, r 33, notifying result of appeals, rr 34—36, legal aid, rr 37, 38 copies of documents for appellants, r 39, witnesses, r 40, special commissioners, r 41, cause lists, r 42, miscellaneous, rr 43—51.

(g) Criminal Appeal Act, 1907 (7 Edw 7, c 23) s 18 (2). The committee consists of a chairman of quarter sessions, appointed by a Secretary of State, the Permanent Under-Secretary of State for the Home Department, the Director of Public Prosecutions, the registrar of the Court of Criminal Appeal, and a clerk of assize and a clerk of the peace appointed by the Lord Chief Justice, a solicitor appointed by the President of the Law Society, and a barrister appointed by the General Council of the Bar (Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 18 (2)).

(a) *Ibid.*, s 18 (1).

(b) *Ibid.*, s 18 (3).

(c) *Ibid.*, s 20 (4).

(d) 11 & 12 Vict. c. 78. See also Criminal Appeal Rules, 1908, r 26, *vide supra*.

(e) *Ibid.*

(f) *Ibid.*, s 15 (2).

(g) By s. 2 of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), the senior master of the Supreme Court (King's Bench Division) was to be the first registrar of the Court. On the occurrence of a vacancy the registrar was to be appointed by the Lord Chief Justice from among the masters of the Supreme Court (King's Bench Division), but by s. 2 of the Criminal Appeal (Amendment) Act, 1908 (8 Edw 7, c. 46), the master of the Crown Office was substituted.

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The Court  
of Criminal  
Appeal

obtaining a hearing of appeals, and applications of which he receives notice, and to lay before the court all necessary documents, exhibits, and things relating to the proceedings in the court below, to refer to the court for summary decision appeals on grounds of law alone, which appear to him not to show any substantial grounds of appeal, to furnish all necessary forms and instructions relating to appeals to any person who demands the same, and to governors and such other officers of prisons as he thinks fit, and to report to the court or a judge thereof any case in which it appears to him that a solicitor and counsel or counsel only should be assigned to the appellant, although no application has been made for the purpose (*h*)

The registrar is to be provided with such additional staff (if any) as the Lord Chancellor with the concurrence of the Treasury may determine (*i*).

## Part VII.—Courts having Jurisdiction in Lunacy.

### SECT 1—*In General*

The King as  
*parens  
patris.*

**194** The Statute *De Prerogativa Regis* (*k*), which is declaratory of the common law, declares that the care and custody of the estates and persons of lunatics and idiots is vested in the King. This authority is delegated by royal warrant under the sign manual (*l*) to the Lord High Chancellor in his capacity as Keeper of the Great Seal

Transfer of  
jurisdiction

**195** The former Lords Justices of Appeal in Chancery (*m*) had, when acting together, all the jurisdiction of the Lord Chancellor (*n*). Subsequently this jurisdiction was conferred on them when acting separately (*o*). This jurisdiction was transferred on the constitution of the Supreme Court (*p*) to such judge or judges of the High Court of Justice as might be intrusted under the sign manual with the care and commitment of the custody of the persons and estates of lunatics and idiots. This jurisdiction of the judge so

(*h*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 15

(*i*) *Ibid*, s 2, Criminal Appeal (Amendment) Act, 1908 (8 Edw 7, c 46), s 2(2). An assistant registrar has been appointed

(*k*) Of uncertain date (Prerog Reg, cc 11, 12 (17 Edw 2, stat 2, cc 9, 10 Ruff). See title CONSTITUTIONAL LAW, Vol VI, p 470)

(*l*) For form of this warrant see Campbell, *Lives of the Chancellors*, Vol I, p 14. The jurisdiction is distinct from that of the Court of Chancery, now transferred to the Supreme Court (see *Murray v Frank* (1779), 2 Dick 555, *Sherwood v Sanderson* (1815), 19 Ves 280, 285, see also *Ex parte Lund* (1802), 6 Ves. 781)

(*m*) Appointed under Court of Chancery Act, 1851 (14 & 15 Vict. c 83)

(*n*) Lunacy Regulation Act, 1853 (16 & 17 Vict c 70), s 2, repealed by the Lunacy Act, 1890 (53 & 54 Vict c 5), s 342

(*o*) Court of Chancery (Officers) Act, 1867 (30 & 31 Vict. c 87), s 13; repealed by the Lunacy Act, 1890 (53 & 54 Vict c 5), s 342.

(*p*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s 108.

intrusted is separate from his jurisdiction as a member of the High Court, as the Judicature Act, 1875 (*g*), expressly provides that this jurisdiction in lunacy shall not be transferred to or vested in the High Court (*r*).

SECT. 1.  
In General.

### SECT. 2—*The Lord Chancellor*

196 Besides the statutory jurisdiction of the Lord Chancellor (or other person to whom such a warrant might be directed), the Lord Chancellor appears to exercise an extensive jurisdiction by virtue of his general power as Keeper of the King's Conscience (*s*). This authority arises on the grant of the custody of the person and estate of a lunatic, but the jurisdiction of the Lord Chancellor is not usually exercised at the present time, and recourse is had instead to that of the judge in lunacy. Petitions, however, are addressed to the Lord Chancellor. There is an appeal from orders in lunacy made by the Lord Chancellor to the Court of Appeal (*t*) and thence to the House of Lords (*u*).

The Lord Chancellor.

197 The Lord Chancellor issues a general commission of inquiry to the masters in lunacy (*b*), and has power to issue a commission specially to any person or persons alone or in addition to the masters in lunacy (*c*). The Lord Chancellor may make rules for carrying the Lunacy Acts into effect and as to percentages and fees (*d*).

Commission of inquiry

### SECT. 3—*The Judge in Lunacy.*

198 The jurisdiction of the judge in lunacy may be exercised either by the Lord Chancellor or by any one or more of such judges of the Supreme Court as may be intrusted under the sign manual with the care and commitment of the custody of the persons and estates of lunatics (*e*). The Lords Justices of the Court of Appeal (*f*) are the judges who are actually so intrusted.

Jurisdiction of the judge in lunacy

The judge in lunacy has power by order to direct an inquisition whether a person is of unsound mind and incapable of managing

(*g*) 38 & 39 Vict c 77, s 7

(*r*) For the procedure in the courts having jurisdiction in lunacy, see title LUNATICS AND PERSONS OF UNSOUND MIND

(*s*) *Ex parte Grimstone* (1772), Amb 706, see also note as to this case to *Orrison v Compton* (Lord) (1793), 4 Bro CC 211, 235, *Re Fitzgerald* (1805) 2 Sch & Lef 432, at p 439. As to the Lord Chancellor, generally, see title CONSTITUTIONAL LAW, Vol VII, pp 55 *et seq*

(*t*) Judicature Act, 1873 (36 & 37 Vict c 66), s 18 (*5*)

(*u*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59), s 3. See, generally, title LUNATICS AND PERSONS OF UNSOUND MIND

(*b*) Lunacy Act, 1890 (53 & 54 Vict c 5), s 112

(*c*) *Ibid*, s 113. As to conditions under which a special commission will be issued, see *Re Brathwaite* (1823), Pope on Lunacy, p 49

(*d*) Lunacy Act, 1890 (53 & 54 Vict c 5), ss 148, 338, Lunacy Act, 1891 (54 & 55 Vict c 65), s 27. The following rules have been made under these powers.—The Rules in Lunacy, 1892, and the Rules in Lunacy 1893, and October 9, 1900, printed in Statutory Rules and Orders Revised, Vol VIII, Lunatic, England, pp 1, 29

(*e*) Lunacy Act, 1890 (53 & 54 Vict c 5), s 108.

(*f*) *Re Gest*, [1904] 1 Ch. 398, C A.

**SECT. 3**  
**The Judge**  
**in Lunacy**

himself and his affairs (*g*), and to direct whether the inquisition shall be held before a jury when the alleged lunatic demands one (*h*) The judge has also power to direct an inquisition before a jury to be tried as an issue in the High Court (*i*), and to make orders as to the custody of the persons of lunatics so found by inquisition and for the management of their property and estates (*k*)

Some of the powers of the judge in lunacy may, in the case of lunatics the value of whose real and personal property is under £200, be exercised by a county court judge (*l*)

**Appeal**

**199.** There is an appeal from orders of the judge in lunacy to the Court of Appeal (*m*) and thence to the House of Lords (*n*)

**SECT. 4—The Masters in Lunacy**

**Masters in**  
**lunacy**

**200** There are two masters in lunacy, who must be barristers of not less than ten years' standing, and are appointed by the Lord Chancellor (*o*) If the inquisition has not been ordered to be tried as an issue in the High Court it is tried before the master with or without a jury, as the case may be (*p*) The masters have power to summon witnesses, to administer oaths, and take affidavits (*q*)

The duties of the registrar in lunacy have been transferred to the masters (*r*)

**Inquiries**

**201** After a person has been found a lunatic by inquisition the masters hold inquiries as to the property etc. of the lunatic, and certify the result of these inquiries and generally exercise the powers of the judge in lunacy, subject, however, to appeal to him (*s*)

The masters are also *ex-officio* visitors of lunatics so found jointly with the Chancery visitors (*a*)

**Offices**

**202** The masters in lunacy have offices at the Royal Courts of Justice, with a chief clerk and a staff of first, second, and third class clerks, and a messenger, as well as clerks attached to the living department (*b*)

(*g*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 90

(*h*) *Ibid.*, ss. 91, 92

(*i*) *Ibid.*, s. 94

(*k*) *Ibid.*, s. 108 (2)

(*l*) *Ibid.*, s. 112 See title **COUNTY COURTS**, Vol. VIII, p. 669.

(*m*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19 (5)

(*n*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3

(*o*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 111

(*p*) *Ibid.*, s. 94

(*q*) *Ibid.*, s. 114

(*r*) Lunacy Orders, 1883, rr. 7, 8, [1883] W. N. Pt. II, p. 80

(*s*) Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 27 (1), Rules in Lunacy, 1892

(*a*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 166

(*b*) See *ibid.*, s. 111 (3), (6), and, generally, title **LUNATICS AND PERSONS OF UNSOUND MIND**

## Part VIII.—Courts-martial.

SECT. 1—*Naval Courts-martial.*SUB SECT. 1—*Constitution*SECT. 1.  
Naval  
Courts-  
martial.Composition  
of naval  
courts-  
martial.

**203** Naval courts-martial are composed of not less than five nor more than nine officers, being flag officers, captains, commanders, or lieutenants of His Majesty's navy on full pay, not under twenty-one years of age. For the trial of a flag officer the president of the court must be a flag officer, and the other members not under the rank of captain, for the trial of a captain the president must not be under the rank of captain, and the other members not under the rank of commander, in other cases the president must not be under the rank of captain, and at least two other members must not be under the rank of commander. A court-martial cannot be held unless at least two of His Majesty's ships not being tenders, and commanded by captains, commanders, or lieutenants of His Majesty's navy on full pay, are together at the time (c)

**204** Courts-martial are held either by order of the Lords of the Admiralty or by the order of officers authorised by commission from the Admiralty to order courts-martial to be held. Any officer holding such commission and being in command of a fleet or squadron may, in case he should detach part of the fleet or squadron under his command, authorise by a commission under his hand the commanding officer of the detachment to order courts-martial (d)

Authority for  
holding  
courts  
martial

Naval courts-martial must be held on board of one of His Majesty's ships or vessels of war (e)

SUB-SECT. 2—*Judge Advocate of the Fleet.*

**205** There were two ancient officers attached to the ancient court of the Lord High Admiral entitled the counsel to the Admiralty and the Judge-Advocate of the Fleet. These two offices are now united. The duties of this officer are to advise the Admiralty upon all legal matters arising out of the administration of military law, to act at a court-martial if appointed to do so by the Admiralty, and to review the proceedings of naval courts-martial in case the Admiralty refer them to him

Judge-  
Advocate of  
the Fleet.

**206** A deputy judge-advocate is appointed to act at every naval court-martial either by the Admiralty, the commander-in-chief of the fleet or squadron, or the president of the court-martial (f). His duties are to give notice of the trial to the prosecutor, to transmit to the prisoner a copy of the charges and of the letter to the commander-in-chief on which the charges are founded, to examine

Deputy  
judge-  
advocate.

(c) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 58 (1)–(7), Naval Discipline Act, 1884 (47 & 48 Vict. c. 39), s. 2

(d) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 58 (9), (12)

(e) *Ibid.*, s. 59

(f) *Ibid.*, s. 61

**SECT 1**  
**Naval**  
**Courts-**  
**martial**

the witnesses (*g*), to administer the oath to the members of the court (*h*). He is sworn to secrecy as to the vote of any particular member of the court (*i*), he administers the oath to witnesses (*k*). He does not act as prosecutor, but if there is no prosecutor, he must ask such questions as will bring the whole case before the court in the fullest manner (*l*). If there is no shorthand writer, he takes down the questions to and answers of witnesses, and also minutes of the proceedings. He is to inform the court as to any informality in its constitution. He has to take care that the prisoner does not suffer any disadvantage from his position as prisoner, or from his ignorance of procedure, or from any other cause, and for that purpose may call witnesses, and put questions to witnesses (*m*). He has to advise the court on points of law (especially as to the admissibility of evidence) and procedure (*n*). He must transmit as soon as possible either the original proceedings or an authenticated copy thereof to the commander-in-chief (*o*).

**SUB-SECT 3 —Jurisdiction**

**Offences**  
**triable by**  
**naval courts**  
**martial**

**207** Naval courts-martial have jurisdiction to try offences against the Naval Discipline Act, 1866 (*p*), wherever committed. These offences are such as relate to misconduct in the presence of the enemy (*q*), communications with the enemy (*r*), neglect of duty (*s*), mutiny (*t*), insubordination (*u*), desertion and absence without leave (*b*), and miscellaneous offences (*c*). They may also try offences punishable by the ordinary law if committed by any person subject to the Naval Discipline Act, 1866, in any harbour, haven, or creek, or on any lake or river, whether in or out of the United Kingdom, or anywhere within the jurisdiction of the Admiralty, or at any place on shore out of

(*g*) Naval Discipline Act, 1866 (29 & 30 Vict c 109), s 66

(*h*) *Ibid*, s 63

(*i*) *Ibid*, s 64

(*k*) King's Regulations for the Navy, chap xvii, art 671.

(*l*) *Ibid*, art 667

(*m*) *Ibid*, art 673

(*n*) *Ibid*, art 674. As to evidence, see titles CRIMINAL LAW AND PROCEDURE, p 377, *post*, EVIDENCE

(*o*) Naval Discipline Act, 1866 (29 & 30 Vict c 109), s 69

(*p*) 29 & 30 Vict c 109

(*q*) *Ibid*, 2—5

(*r*) *Ibid*, ss 6—8

(*s*) *Ibid*, s 9

(*t*) *Ibid*, ss 10—16

(*u*) *Ibid*, 17, 18

(*b*) *Ibid*, ss 19—26.

(*c*) *I.e.*, profane swearing, drunkenness, and immorality (s 27), cruelty or oppression by officers (s 28), suffering ships to be improperly lost (s 29), not defending ships under convoy (s 30), master of merchant ship not obeying orders of convoying officer (s 31), taking cargo except bullion or jewels (s 32), embezzling public stores (s 33), burning magazines not belonging to enemy (s 34), making or signing false musters (s 35), misconduct in hospital (s 36), stirring up disturbance (s 37), not sending all papers found in prize to Court of Admiralty (s 38), taking money etc out of prize before condemnation (s 39), ill-using persons on board of prize (s 40), collusively capturing or restoring prize (s 41), breaking bulk on board prize with intent to embezzle (s 42), acts, disorders, or neglects to prejudice of good order and discipline (s 43)



SECT. 1.  
Naval  
Courts-  
martial

the United Kingdom, or in any of His Majesty's dockyards, victualling yards, steam factory yards, or on any gun wharf, or in any arsenal, barrack, or hospital belonging to His Majesty, whether in or out of the United Kingdom (*d*) No person, except offenders who have avoided justice or fled from apprehension, can be tried and punished under the Act for any offence after three years from its commission, or after one year from his return to the United Kingdom where he has been absent therefrom during such period of three years (*e*)

**208** The persons subject to the jurisdiction of naval courts-martial are—(1) all persons in or belonging to His Majesty's navy and borne on the books of any ship in commission (*f*), (2) His Majesty's land forces when embarked on any of His Majesty's ships (*g*) to such extent and under such regulations as are prescribed by Order in Council (*h*), (3) all passengers on His Majesty's ships (*i*) under regulations prescribed by the Admiralty (*k*), (4) all persons borne on the books of hired vessels in time of war (*l*), (5) crews of ships wrecked, lost, or captured until a court-martial is held to inquire into the cause of the wreck, loss, or capture (*m*), (6) naval coast volunteers during exercise and on actual service (*n*), (7) naval volunteers during exercise and actual service (*o*), (8) volunteers belonging to the Royal Naval Volunteer Reserve during exercise and actual service (*p*), (9) officers of reserve to the Royal Navy during exercise and on actual service (*q*)

Persons  
subject to  
jurisdiction.

**209** Naval courts martial have jurisdiction to inflict the punishment of death in cases of murder (*r*), of acting as a spy for the enemy, of treachery, cowardice, mutiny, or desertion to the enemy (*s*), and of burning any magazine etc not belonging to an enemy, pirate, or rebel (*t*) They have also power, unless expressly prohibited, in the case of offences not punishable with death or penal servitude to inflict punishment according to the laws and customs in such cases used at sea (*u*)

Punishments

**210** This jurisdiction does not supersede or affect the authority of

Concurrent  
jurisdiction  
of law courts

(*d*) Naval Discipline Act, 1866 (29 & 30 Vict c 109), s 16.

(*e*) *Ibid.*, s 54

(*f*) *Ibid.*, s 87

(*g*) *Ibid.*, s 88

(*h*) Order in Council of 6th February, 1882, as amended by Order in Council of 30th June, 1890 (Statutory Rules and Orders Revised, Vol. IX, Navy, p 1), Order in Council as to Royal Marines, 6th February, 1882 (*ibid.*, p 8)

(*i*) Naval Discipline Act, 1866 (29 & 30 Vict c 109), s 89

(*k*) King's Regulations for the Navy, chap xix, art 726

(*l*) Naval Discipline Act, 1866 (29 & 30 Vict c 109), s. 90

(*m*) *Ibid.*, s 91

(*n*) Naval Volunteers Act, 1853 (16 & 17 Vict c 73), s. 17, Naval Reserve Act, 1900 (63 & 64 Vict c 52)

(*o*) Royal Naval Reserve (Volunteer) Act, 1859 (22 & 23 Vict c 40), s 16.

(*p*) *Ibid.*, Naval Forces Act, 1903 (3 Edw 7, c. 6), s 1

(*q*) Officers of Royal Navy Reserve Act, 1863 (26 & 27 Vict. c 69), s 2.

(*r*) Naval Discipline Act, 1866 (29 & 30 Vict c. 109), s. 45.

(*s*) *Ibid.*, ss 2—13, 16, 19.

(*t*) *Ibid.*, s 34

(*u*) *Ibid.*, s 44

**SECT 1.**  
**Naval**  
**Courts-**  
**martial**

power of any court or tribunal of ordinary civil or criminal jurisdiction in His Majesty's dominions in respect of any offence punishable by the common or statute law, and does not prevent any person being proceeded against and punished in respect of any such offence in the ordinary courts (*b*)

**SUB SECT 4 — Procedure**

**Procedure.**

**211** The procedure of naval courts-martial is regulated by the Naval Discipline Act, 1866 (*c*), and by the King's Regulations for the Navy (*d*), and is dealt with elsewhere (*e*).

**SECT 2 — Military Courts-martial.**

**SUB-SECT 1 — Constitution.**

**Regimental**  
**court martial**

**212** Military courts-martial are either—(1) regimental, (2) district, or (3) general. A regimental court-martial must consist of at least three members, each of whom has held a commission for a year. The president should not be under the rank of captain, except where no such officer is available (*f*). A district court-martial must consist of at least three members, each of whom has held a commission for two years (*g*). A district court-martial must consist as far as practicable of officers of different corps, and can only be composed exclusively of officers of the same regiment of cavalry or the same battalion of infantry, if other officers are not available (*h*). A general court-martial must consist in the United Kingdom, India, Malta, and Gibraltar of not less than nine and elsewhere of not less than five officers, each of whom has held a commission for three whole years, and of whom not less than five must be of a rank not below that of captain (*i*).

**District**  
**court martial**

**General**  
**court-martial**

**Convening**  
**the court**

**213** Regimental courts-martial can be convened by any officer authorised to convene general or district courts-martial, any commanding officer not below the rank of captain, any officer not below the rank of captain when in command of two or more corps or portions of corps, and on board a ship a commanding officer of any rank (*k*).

District courts-martial can be convened by officers authorised to convene general courts-martial and officers deriving from them authority to convene district courts-martial (*l*).

General courts-martial can be convened by His Majesty or an officer deriving authority to do so immediately or mediately from His Majesty (*m*).

(*b*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 101

(*c*) *Ibid.*, ss. 58—69, as amended by the Naval Discipline Act, 1884 (47 & 48 Vict. c. 39)

(*d*) King's Regulations for the Navy, chap. xvii, arts. 659—697.

(*e*) See title ROYAL FORCES

(*f*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 47

(*g*) *Ibid.*, s. 48 (4)

(*h*) Rules of Procedure, 1907, r. 20A, published by the War Office in the "Manual of Military Law"

(*i*) Army Act, 1881 (44 & 45 Vict. c. 58), ss. 48 (3), 50 (1).

(*k*) *Ibid.*, ss. 47 (1), 50 (1)

(*l*) *Ibid.*, ss. 48 (2), 50 (1), 123 (1) (b)

(*m*) *Ibid.*, s. 48 (1). His Majesty may authorise an officer to convene a general

**214** The president of a district or general court-martial is appointed by the authority convening the court. He must not be under the rank of field officer, unless the convening officer is under that rank or a field officer is not available, in which case he may be of the rank of captain, except when in the case of a district court-martial a captain is not available (a)

SMO. &  
Military  
Court-  
martial.

The president

**215** Where a complaint is made to any officer in command of a detachment or portion of troops beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that any offence has been committed by a person subject to military law against the property or person of any inhabitant of or resident in such country, then, if, in the opinion of such officer, it is not practicable to try the offence by an ordinary general court-martial, he may, although not authorised to convene a general court-martial, convene a field general court-martial for the trial of the person charged with the offence

Field general  
court-martial.

A field general court-martial must consist of not less than three officers, except where three officers are not available, in which case it may consist of two officers (b). The convening officer may preside, but if practicable he should appoint another officer to preside, who is, if practicable, not under the rank of captain (c).

#### SUB-SECT. 2.—*Judge-Advocates*

**216** A judicial officer called the Judge Advocate-General is appointed by letters patent. He is a permanent official under the orders of, and acting as legal adviser to, the Secretary of State for War (d). He never officiates at courts-martial, the principal part of his duties being to review the proceedings of courts-martial to secure the due administration of military justice

Judge  
Advocate  
General

The Judge Advocate-General has by his patent powers both in the United Kingdom and abroad, except in India, to appoint deputies to act as officiating judge-advocates at all courts-martial where it is considered advisable

**217** Where the convening officer of a court-martial has authority to appoint a judge-advocate he shall in the case of a general, and may in the case of a district, court-martial appoint a judge-advocate to act at the court-martial (e). The duties of a judge-

Judge  
advocates.

court-martial in a particular case, or give to any qualified officer a general authority to convene general courts-martial, or empower any qualified officer to delegate such a general authority to any officer under his command not under the rank of field officer (except in cases where there is no field officer in command) so far as regards persons subject to military law under, or within the territorial limits of, his command (*ibid.*, s. 122 (1))

(a) Army Act, 1881 (44 & 45 Vict. c. 58), s. 48 (9)

(b) In this case the jurisdiction as to punishment is limited. See p. 104, *post*.

(c) Army Act, 1881 (44 & 45 Vict. c. 58), s. 49

(d) The Judge Advocate-General was formerly a privy councillor and one of the ministry, and advised the Sovereign on the legality of the proceedings of courts-martial. Since 1892 he has ceased to be a privy councillor, nor does he advise the Crown directly (Manual of Military Law, 1907, p. 160)

(e) Rules of Procedure, 1907, r. 101. In the United Kingdom convening

SECT. 2  
Military  
Courts-  
martial

advocate are similar to those of a judge-advocate at a naval court-martial (*f*)

In the case of general courts-martial, after sentence is awarded, it is the duty of the judge-advocate to sign the proceedings and forward the same in the United Kingdom for confirmation to the Judge Advocate-General's office, and outside the United Kingdom to the general or other officer having power to confirm the findings and sentences of such courts-martial. In the case of district courts-martial the judge-advocate forwards the proceedings to the confirming officer to lay before the Judge Advocate-General for his approval before causing the sentence to be promulgated.

SUB-SECT 3 — Jurisdiction

Offences  
triable by  
military  
court martial

**218** Military courts-martial have jurisdiction to try offences in respect of military service (*g*), and also offences against the ordinary criminal law (*h*), committed by persons subject to military law (*i*), wherever they may be committed. But the jurisdiction to try cases of treason, murder, manslaughter, treason felony, and rape is restricted to Gibraltar and places out of His Majesty's dominions, except in the case of persons on active service out of the United Kingdom, or where the offence was committed at a place out of the United Kingdom more than one hundred miles, measured in a

officers have not this power. Application must be made to the Judge Advocate-General.

(*f*) See p. 97, *ante*

(*g*) The offences are — Shamefully surrendering posts, casting away arms, corresponding with or assisting the enemy, having been made prisoner of war, voluntarily serving with or aiding the enemy, and cowardice (Army Act, 1881 (44 & 45 Vict c 58), s 4), on active service leaving the ranks without orders, destroying property without orders, being taken prisoner through neglect of duty etc., or failing to rejoin when able, without due authority holding correspondence with or sending flag of truce to the enemy, spreading reports calculated to create unnecessary alarm (*ibid*, s 5), plundering, leaving post without orders, striking sentinels, impeding or refusing to assist provost marshal and his assistants, committing offences against person or property of inhabitants, creating false alarms, treacherously making known pass words, detaining or appropriating supplies contrary to orders, sentinels sleeping on their posts, or being drunk on them, or leaving them before being relieved (*ibid*, s 6), mutiny or sedition, or inciting thereto, or not informing of actual or intended mutiny known to offender (*ibid*, s 7), assaulting superior officer or using insubordinate language (*ibid*, s 8), disobedience to lawful commands (*ibid*, s 9), resisting arrest and soldier breaking out of barracks etc (*ibid*, s 10), neglect to obey orders (*ibid*, s 11), desertion, fraudulent enlistment, and absence without leave (*ibid* ss 12–15), officers behaving in a scandalous manner (*ibid*, s 16), fraud by persons in charge of money or goods (*ibid*, s 17), disgraceful conduct of soldiers (*ibid*, s 18), drunkenness (*ibid*, s 19), offences in relation to persons in custody (*ibid*, ss 20–22), offences in relation to property and necessities (*ibid*, ss 23, 24), offences in relation to false documents and statements (*ibid*, ss 25–27), offences in relation to courts-martial (*ibid*, ss 28, 29), offences in relation to billeting and impressment of carriages (*ibid*, ss 30, 31), offences in relation to enlistment (*ibid*, ss 32–34), traitorous words (*ibid*, s 35), injurious disclosures (*ibid*, s 36), ill-using soldiers (*ibid*, s 37), duelling and attempted suicide (*ibid*, s 38), refusal to deliver prisoner to civil power (*ibid*, s 39), conduct to the prejudice of discipline (*ibid*, s 40)

(*h*) Army Act, 1881 (44 & 45 Vict c 58), s 41

(*i*) *Ibid*, ss 175–184

straight line, from any city or town where the offender can be tried by a competent civil court (*k*).

SECT. 2.  
Military  
Courts-  
martial.

Concurrent  
jurisdiction  
of civil  
courts.

**219** A person subject to military law may be tried by any competent civil court in His Majesty's dominions for any offence for which he would be liable if he were not subject to military law (*l*) If he has been previously tried for the same offence by a court-martial, the civil court must, in awarding punishment, have regard to the military punishment he may already have undergone (*m*) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he is not liable to be tried for that offence by court-martial (*n*) And he is not so liable if he has been previously acquitted or convicted of the same offence by a court-martial (*o*)

**220** A regimental court-martial has not jurisdiction to try an officer (*a*) or a warrant officer not holding an honorary commission (*b*), nor to award the punishment of death, penal servitude, or imprisonment, or of detention in excess of forty-two days, or of discharge with ignominy (*c*)

Persons  
subject to the  
jurisdiction

A district court-martial has jurisdiction to try all persons subject to military law, except such as are subject to military law as officers (*d*), for any offence under the Army Act, 1881, but has not jurisdiction to award the punishment of death or penal servitude (*e*)

A general court-martial has jurisdiction to try all persons subject to military law, whether as officers or not, for any offence under the Army Act, 1881, and to award the punishment of death for treason and murder (*f*) and for treachery, cowardice, wilful defiance of authority, assaulting superior officers in the execution of their duty, mutiny (*g*) or complicity therein, or not informing of any actual or intended mutiny of which the offender knows, or on active service plundering or committing offences against the property or person of the inhabitants, striking a sentinel, giving false alarms, sentinels sleeping or being drunk on their posts or leaving them before being regularly relieved, and desertion (*g*), and to award the punishment of penal servitude when applicable Sentence of death is not to be passed without the concurrence of two-thirds of the members of the court-martial (*h*)

(*k*) Army Act, 1881 (44 & 45 Vict c 58), s 41

(*l*) *Ibid*, s 41 (*b*)

(*m*) *Ibid*, s 162 (1)

(*n*) *Ibid*, s 162 (6)

(*o*) *Ibid*, s 157

(*a*) That is, persons subject to military law as officers (s 175), warrant officers and others holding honorary commissions

(*b*) Army Act, 1881 (44 & 45 Vict c 58), s 182 (1)

(*c*) *Ibid*, s 47 (5).

(*d*) *Ibid*, s 175

(*e*) *Ibid*, s 48 (6)

(*f*) *Ibid*, s 41 (1), (2)

(*g*) *Ibid*, ss 4, 6-9, 12.

(*h*) *Ibid*, s 48 (8)

**SECT. 2.**  
**Military**  
**Courts**  
**martial**

A field general court-martial has jurisdiction to try any person subject to military law who is under the command of the convening officer, and may award any sentence which a general court-martial is competent to award for the offence. It can only award sentence of death with the concurrence of all its members. If the court consists of less than three members, the sentence must not exceed field punishment (i) or imprisonment (k).

**Confirmation**  
**of findings**  
**and sentences**

**221.** The findings and sentences of courts-martial require to be confirmed as follows: in the case of regimental courts-martial by the convening officer, or the officer having authority to convene such courts at the date of the submission of the finding and sentence; in the case of district courts-martial by an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial (l) from an officer authorised to convene general courts-martial, in the case of general courts-martial by His Majesty or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately (m) from His Majesty (n). The confirming authority may send the finding and sentence back for revision once, but not more than once. The sentence cannot be increased on revision (o). A finding of acquittal does not require confirmation (p). Sentence of death or of penal servitude for civil offences also requires confirmation, in India by the Governor-General and in colonies by the governor (q).

**SUB-SECT 4.—Procedure**

**Procedure**

**222** The procedure of military courts-martial is regulated by the Army Act, 1881 (r), and by the rules of procedure, 1907 (s), and is dealt with elsewhere (t).

**SECT 3 —Courts-martial under Martial Law**

**Martial law**

**223** When His Majesty's forces are in armed occupation of hostile territory, it is competent to His Majesty's commanders to declare that martial law shall prevail in such territory, and to lay down rules which they deem essential for the preservation of His

(i) Army Act, 1881 (44 & 45 Vict c 58), s 44 (5), Rules for Field Punishment Manual of Military Law, 1907, p 698

(k) *Ibid*, s 49

(l) An officer authorised to convene general courts-martial may give this authority to any officer to whom he delegates power to convene general courts-martial (*ibid*, s 123 (1) (c)). See p 100, note (m), *ante*

(m) His Majesty may empower any qualified officer to confirm the findings and sentences of general courts-martial or to delegate this power to any officer to whom he could delegate a power to convene general courts-martial (*ibid*, s 122 (1) (d), (e)). See p 100, note (m), *ante*

(n) Army Act, 1881 (44 & 45 Vict c 58), s 54 (1)

(o) *Ibid*, s 54 (2)

(p) *Ibid*, s 54 (3)

(q) *Ibid*, s 54 (7), (8), (9).

(r) 44 & 45 Vict c 58

(s) Manual of Military Law, 1907, pp 448—508

(t) See title **ROYAL FORCES**

SECT. 2.  
Courts-  
martial  
under  
Martial  
Law.

Majesty's forces and military stores. In such a case, the jurisdiction of courts-martial extends over all persons resorting to this territory (not being in the military or naval service of an independent Sovereign (u)). This extends to the case of one of His Majesty's ships being at a place inhabited by savages, where no law prevails, and where no redress for outrage can be obtained from any Government, or in any tribunal (x). In the case of an insurrection, similar powers may arise during the continuance of the necessity (y).

## Part IX.—Miscellaneous Maritime Courts.

**224** In addition to the Admiralty jurisdiction exercised by the Judicial Committee of the Privy Council (a), the Supreme Court of Judicature (b) and other courts already referred to in this article, there are various courts exercising maritime jurisdiction which have been or will be described in other articles, such as the Cinque Ports Court of Admiralty (c), the County Courts (d), the Liverpool Court of Passage (e), the Cinque Ports Salvage Commissioners (f), various Colonial Courts of Admiralty (g), Prize Courts (h), and it is not thought necessary to make further reference to these.

Maritime  
courts

### SECT. 1—*Local Courts of Admiralty*

**225** Many of the seaport boroughs had in their charters a grant of a court of Admiralty (i), but in 1835 all local courts, except that of the Cinque Ports, were deprived of any Admiralty jurisdiction they might have (k). Certain titular and honorific rights, however, still appear to survive. For instance, the mayor of Southampton has a silver oar as *insigne* of a titular admiralty, and is entitled to receive the first visit from foreign men-of-war visiting the port, and the mayors of some other ports have a similar privilege.

Borough  
courts of  
Admiralty.

(u) Opinions of the Law Officers (Stephens, Gifford, and Smith, *Manual of Naval Law*, 1901, p. 133).

(x) Opinion of the Law Officers (Parliamentary Debates, 3rd ser., Vol. CCXXXVII, p. 533).

(y) *R v Eyre* (1868), Finlason's Report. This report of the charge of BLACKBURN, J., is printed from the shorthand writer's notes as corrected by the judge. As to martial law, see title CONSTITUTIONAL LAW, Vol. VI., p. 403.

(a) See p. 28, *ante*.

(b) See p. 62, *ante*.

(c) See title ADMIRALTY, Vol. I., p. 139.

(d) *Ibid.*, p. 127.

(e) *Ibid.*, p. 140.

(f) *Ibid.*, p. 139.

(g) *Ibid.*, p. 140.

(h) See title PRIZE LAW AND JURISDICTION.

(i) Some maritime towns had from a very early period courts of the seaport, which administered the law maritime. Disputes as to jurisdiction arose between the admiral's court and these courts, which led to two statutes ((1888) 13 Ric. 2, st. 1, c. 5; (1890) 15 Ric. 2, st. 2, c. 3) defining and restricting the jurisdiction of the admiral (Carter, *History of English Legal Institutions*, 1st ed., p. 168).

(k) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 108.

**SECT. 2.**  
**Courts of**  
**the Vice-**  
**Admirals**  
**of the**  
**Coast.**

Vice-admiral  
of the coast

**SECT 2—Courts of the Vice-Admirals of the Coast**

**226** The sea coast of England and Wales is divided into nineteen districts, for each of which a vice-admiral of the coast can be appointed (*l*) Vice-admirals of the coast represent the Lord High Admiral (or the Lords Commissioners for executing that office) in his capacity so far as it is not concerned with the navy. They are appointed by letters patent under the Great Seal, and the appointment is *durante bene placito* (*m*) The jurisdiction extends up to high-water mark and to the first bridges towards the sea on rivers, and is exercisable by a judge (*a*) The patent of the vice-admiral empowers him to appoint his own officers, excepting, however, the judge, registrar, and marshal of his vice-admiralty court These excepted officers are appointed by letters patent, but there are none in existence at the present time, and, consequently, although the jurisdiction of these courts of vice-admiralty over causes of action arising in the jurisdiction has never been abolished by statute, there is now no means of executing it The jurisdiction as to wreck was, however, taken away by the Merchant Shipping Act, 1894 (*b*)

**SECT 3—Slave Trade**

Slave trade

**227** British vessels seized for breaches of the laws against the slave trade, and foreign vessels, if under a treaty or convention (*c*)

(*l*) (1) Northumberland, Durham, and York, (2) Lincoln, (3) Norfolk, (4) Suffolk, (5) Essex, (6) Kent, (7) Sussex, (8) Hampshire, (9) Dorset, (10) Devon, (11) South Cornwall, (12) North Cornwall, (13) Somerset, (14) Gloucester, (15) South Wales, (16) North Wales, (17) Chester, (18) Lancaster, (19) Westmoreland and Cumberland

(*m*) The form of patent is printed in Baker, Vice-Admiral of the Coast, pp 50 *et seq*, where the jurisdiction exercised by the court is stated

(*a*) By an order of a committee of the Lords and Commons, 1635, the judge was to be a discreet and learned man in the civil laws dwelling or resorting within the circuit of his office, or for want of a civilian one learned in the common laws of the realm dwelling within the same circuit In 1663 the Duke of York (afterwards James II), the then Lord High Admiral, issued instructions to the judge of the Court of Admiralty and to the vice-admirals, by which the powers and duties of those officers were regulated Under these the whole of the judicial powers was directed to be exercised by the judge, but the levying and receiving the perquisites of the office or droits of Admiralty remained with the vice-admirals These instructions did not apparently interfere with the jurisdiction of the judges of the Vice-Admiralty Courts, as these judges continued to be appointed (Encyclopædia Britannica, Vol I, pp 159, 160) The patents confer no jurisdiction in prize matters See Baker, Vice-Admiral of the Coast, p 69

(*b*) 57 & 58 Vict. c. 60, s 529, re-enacting the Merchant Shipping Act, 1854 (17 & 18 Vict c 104), s 440

(*c*) The following have been declared by Order in Council to be existing Slave Trade Treaties within the meaning of the Slave Trade Act, 1873 (36 & 37 Vict c 88) —Brussels General-Act of 2nd July, 1890, Abyssinia of 3rd June, 1884, Egypt of 4th August, 1877, Germany of 29th March, 1879, Italy of 21st December, 1885, and 14th September, 1889, Johanna of 10th October, 1882, Mohilla of 24th October, 1882, Persia of 2nd March, 1882, Spain of 2nd July, 1890, Turkey of 25th January, 1880, and 3rd March, 1883 All these treaties together with the Orders in Council are printed in Statutory Rules and Orders, Revised, Vol. XI, Slave Trade.



they are liable to be condemned by British tribunals, are amenable to the jurisdiction of the High Court of Admiralty (d), the Colonial Courts of Admiralty (e), and the Vice-Admiralty Courts, the jurisdiction of which is by their commissions limited in matters relating to the slave trade (f)

In certain cases slave trade treaties and conventions contain provisions for the appointment of mixed courts or commissions; in such case His Majesty has power to appoint such commissioners, judges, arbitrators, secretary, registrar and other officers, as are mentioned in such provisions (g)

#### SECT. 4—*Courts of Survey.*

**228.** A court of survey for a port or district consists of a judge with two assessors. The judge is either a wreck commissioner, a stipendiary or metropolitan police magistrate, a judge of county courts, or other fit person approved by the Home Secretary. But in any special case the Board of Trade may appoint a wreck commissioner to be the judge. The assessors are persons of nautical, engineering, or other special skill and experience, one appointed by the Board of Trade, and the other summoned by the registrar of the court out of a list nominated by the local marine board, or if there is none, by a body of local shipowners or merchants approved by the Home Secretary, or if there is no such list, appointed by the judge (h)

Courts of  
Survey

**229** Courts of survey have jurisdiction to hear appeals by the owners of ships detained by the Board of Trade as unsafe or unseaworthy (i), or from a declaration of survey of a passenger steamer (k), or by the owner of an emigrant ship from the refusal by an emigration officer of a certificate for clearance (l)

Jurisdiction

#### SECT. 5—*Formal Investigation of Shipping Casualties.*

**230** The investigation is held either by a court of summary jurisdiction or by a wreck commissioner, according to the direction of the Board of Trade. If a stipendiary magistrate is a member of a local marine board of any place, a formal investigation at that place must be held before him if he happens to be present (m). If the investigation involves or appears likely to involve any question as to the cancellation or suspension of the certificate of a master, mate, or engineer, the court must be held with the assistance of not less than two assessors having experience in the merchant

Inquiries as  
to wrecks etc.

(d) Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 5

(e) Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 2

(f) Slave Trade Act, 1873 (36 & 37 Vict. c. 88), ss. 2, 5

(g) *Ibid.*, s. 7

(h) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 487, (1), (2), (3)

(i) *Ibid.*, s. 459

(k) *Ibid.*, s. 275, Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 7

(l) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 318. See further, title SHIPPING AND NAVIGATION

(m) *Ibid.*, s. 476 (1)

SECT. 5.  
Formal  
Investiga-  
tion of  
Shipping  
Casualties.  
—  
Jurisdiction

service (a) chosen out of a list of persons approved for three years (b)

**231** The court has jurisdiction to hear the evidence relating to a shipping casualty (c), or, if the Board of Trade think fit, loss of life from a fishing vessel's boat (d), and to make a report to the Board of Trade containing a full statement of the case and of the opinion of the court thereon, accompanied by such report of or extracts from the evidence, and such observations as the court think fit (e). The court has all the powers of a court of summary jurisdiction acting as a court in the exercise of their ordinary jurisdiction (f).

The court has power, if one of the assessors concurs in the finding, to cancel or suspend the certificate of a master, mate, or engineer, if the court finds that the loss or abandonment of, or serious damage to any ship, or loss of life has been caused by his wrongful act or default (g). This decision must be made in open court (h).

#### SECT 6—*Naval Courts.*

##### SUB-SECT 1—*Constitution*

Naval courts  
on foreign  
station

**232** A naval court can be summoned by any officer in command of any of His Majesty's ships on any foreign station, or in the absence of such officer by any consular officer (i) in cases where such a court has jurisdiction (k). A naval court consists of not more than five nor less than three members, of whom, if possible, one is a British naval officer not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest are either British naval officers, masters of British merchant ships, or British merchants. The court may include the officer summoning it, but not the master or consignee of the ship to which the parties complaining or complained against belong (l).

##### SUB SECT 2.—*Jurisdiction*

Jurisdiction

**233** The jurisdiction of a naval court arises (1) whenever a complaint is made to the summoning officer, which appears to him to require immediate investigation, by the master of any British ship, or by a certificated mate, or by any one or more of the seamen belonging to such ship, (2) whenever the interest of the owner of any British ship or of the cargo thereof appears to the summoning officer to require it, (3) whenever any British ship is wrecked, abandoned, or otherwise lost at or near the place where the

(a) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 466 (4).

(b) *Ibid*, s 467

(c) *Ibid*, s 466 (10)

(d) *Ibid*, s 466

(e) *Ibid*, s 466 (6)

(f) *Ibid*, s 466 (10)

(g) *Ibid*, s 470 (1)

(h) *Ibid*, s. 470 (2) See also title SHIPPING AND NAVIGATION.

(i) *Ibid*, s 480

(k) See *infra*

(l) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 481

SECT. 8.  
Naval  
Courts.

summoning officer is, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrive at that place (*m*).

A naval court must hear the complaint or other matter brought before them, or investigate the cause of the wreck, abandonment or loss, in such a manner as to give every person against whom any complaint or charge is made an opportunity of making a defence. Naval courts have power to administer oaths, to summon parties and witnesses, and to compel their attendance and the production of documents (*n*).

**234** Naval courts can exercise the following powers (1) If the court is unanimous that the safety of the ship or crew or the interest of the owner require it, it may remove the master, and, with the consent of the consignee of the ship, appoint another person to act in his stead, (2) where authorised by law (*o*), cancel or suspend the certificate of any master, mate, or engineer, (3) discharge a seaman from his ship, (4) order the whole or any part of the wages of a seaman so discharged to be forfeited either as compensation to the owner, or as a fine to be paid into the exchequer; (5) decide any questions as to wages, fines, or forfeiture arising between the parties, (6) direct that costs incurred in obtaining the imprisonment of any seaman or apprentice in any foreign port may be deducted from his wages, (7) send home for trial masters, seamen, and apprentices charged with offences against property or persons out of His Majesty's dominions, or with offences on the high seas (*p*); (8) punish a master or any of the crew of a British ship for any offence under the Act which is punishable on summary conviction, (9) order a survey of the ship, (10) deal with the costs, and order persons making frivolous or vexatious complaints to pay compensation for any loss or delay caused thereby Orders made by a naval court within its jurisdiction are conclusive of the rights of the parties (*q*), but sentences of imprisonment must be confirmed by the senior naval or consular officer present at the place

Powers of  
court

**235** A naval court must make a report to the Board of Trade, containing (1) a statement of the proceedings, the order made, and a report of the evidence, (2) an account of the wages of any seaman or apprentice discharged from his ship by the court, (3) in case of an inquiry into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of the casualty, together with any requisite remarks on the conduct of the master and crew (*r*)

Report to  
Board of  
Trade

(*m*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 480 See also title SHIPPING AND NAVIGATION

(*n*) *Ibid.*, s. 482

(*o*) In the same cases as courts holding formal investigations into shipping casualties are authorised to do so (see p. 108, *ante*)

(*p*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 632.

(*q*) *Ibid.*, s. 483

(*r*) *Ibid.*, s. 484

**PART X**  
**Courts of**  
**Escheat**

( Courts of  
escheat

## Part X.—Courts of Escheat.

**236** Where any real estate (*a*) is alleged to have escheated (*a*) or been forfeited to the Crown, or to the Sovereign in right of the Duchy of Lancaster, or to the Sovereign or the Prince of Wales in right of the Duchy of Cornwall, a commissioner is or commissioners are appointed under the Great Seal or the wafer Great Seal to hold an inquest touching the real estate or any interest therein escheated or supposed to have escheated (*b*) The inquest is held openly and publicly (*c*) before a jury of twelve (*d*) which is returned and impanelled by the sheriff and sworn by the commissioner (*e*) The attendance of witnesses may be compelled by Crown Office subpoena (*f*) Any person claiming any title to the real property may be heard by himself, attorney, or counsel (*g*) The commissioner may discharge the jury and have a fresh jury returned and impanelled (*h*) In the case of witnesses who are unable to attend or are dead, affidavits and statutory declarations may be accepted (*i*) The commissioner may take the verdict of the majority of the jury (*h*) The inquisition must be in writing or print or both and under the hands and seals of the commissioner or commissioners present and of the jurors concurring (*l*) It should find of whom the land was held and any other material matter specified in the commission (*m*) The commission with the inquisition is returned into the Central Office of the Supreme Court and filed in the Crown Office (*n*) An award of *melius inquirendum* may be awarded on the fiat of the Attorney-General or by order of the Lord Chancellor (*o*) On a *melius inquirendum* the proceedings commence *de novo* in the same manner as before (*p*) The inquest may be traversed by any person claiming any title to the real estate or interest therein (*q*) in manner directed by Rules of the Supreme Court (*r*) Inquisitions are not to

(*a*) Including the beneficial interests of *resque trusts* (Intestates Estates Act, 1884 (47 & 48 Vict c 71) s 4)

(*b*) Where they are not held of a manor under a tenure created before the Statute of Quia Emptores (18 Edw 1, cc 1, 2, 3) As to escheat generally, see title REAL PROPERTY AND CHARITIES REAL

(*b*) The Escheat Procedure Rules, 1889, r 1 dated 25th July, 1889, made by the Lord Chancellor with assent of the Treasury, pursuant to the Escheat (Procedure) Act 1887 (50 & 51 Vict c 53), s 2, Statutory Rules and Orders Revised, Vol IV, Escheat, p 1

(*c*) *Ibid*, r 3

(*d*) The commissioner may proceed with not less than nine jurors (*ibid*, r 4)

(*e*) *Ibid*, r 4

(*f*) *Ibid*, r 5

*Ibid*, r 6

*Ibid*, r 7

(*g*) *Ibid*, r 8

(*h*) *Ibid*, r 9

(*i*) *Ibid*, r 10

(*m*) *Ibid*, r 11

(*n*) *Ibid*, r 13

(*o*) *Ibid*, r 14

(*p*) *Ibid*, r 15

*Ibid*, r 16

(*r*) No Rules of the Supreme Court have been made in this behalf

be quashed for informality (*s*). These rules apply to lands held of the Duchy of Cornwall, but not to lands held of the Duchy of Lancaster (*t*). In respect of these latter no rules have been made by the Chancellor of the Duchy (*a*). Any existing practice is therefore preserved (*b*). The commission issues under the seal of the Duchy, and the proceedings are filed in the Chancery of Lancaster.

## Part XI.—Forest Courts.

### SECT 1—*In General*

**237** The Sovereign is possessed of certain forests (*c*), for the protection of which there are particular laws and officers. For the execution of the forest laws there are four courts appointed, the Attachment or Woodmote, also called the Forty Days' Court, (2) the Regard or Survey of Dogs, (3) the Swanmote, and (4) the Eyre or Justice Seat. The greater number of forests in England have been disafforested, but three (*d*) still remain. In these the forest laws (*e*) are to some extent in force, and the forest courts are still held, although many of their functions are obsolete (*f*). The jurisdiction of forest courts is of a private and special nature, confined to a particular spot, and instituted only to redress particular injuries and nuisances, namely, such as relate to the King's venison (*g*), to the vert (*h*), and to the covert, and no other trespasses are cognisable by these courts (*i*). Forest courts

(*s*) Escheat Procedure Rules, 1889, r 17

(*t*) *Ibid*, rr 19, 20

(*a*) See generally 4 Co Inst 225. The inquest can be held *virtute officii* by an escheator, but no such officers are now appointed in England, although in Ireland the title survives, e.g., escheator of Munster, which is used in respect of Irish members of Parliament in the same way as the office of steward of the Chiltern Hundreds, so as to vacate the seat in Parliament.

(*b*) Escheat (Procedure) Act, 1887 (50 & 51 Vict c 53), s 3 (3)

(*c*) As to Royal Forests and the Forest Courts, see also title CONSTITUTIONAL LAW, Vol VII, pp 181 *et seq*.

(*d*) Alice Holt, Forest of Dean, the New Forest

(*e*) The statutes relating to forests are the following: 25 Edw 1, Carta de Libertatibus de Forestis, 34 Edw 1, Ordinatio de Foresta, Assize de Foresta, temp incert, 1 Edw 3, stat 2, c 2, 25 Edw 3, stat 5, c 7, 7 Ric 2, cc 3, 4, 7 Hen 4, c 1, 4 Hen 5, stat 2, c 1, 22 Edw 4, c 7, 27 Hen 8, c 7, 32 Hen 8, c 35, 16 Car 1, c 16. See title CONSTITUTIONAL LAW, Vol VII p 182, note (*r*).

(*f*) As to the decay of the forest courts and the present control of forests, see title CONSTITUTIONAL LAW, Vol VII, p 185.

(*g*) See title CONSTITUTIONAL LAW, Vol VI, pp 490, 491, Vol VII p 181, note (*q*).

(*h*) See title CONSTITUTIONAL LAW, Vol VII, p 181, note (*p*). Stubbs, Select Charters, 347 *et seq*, Manwood, Treatise of the Forest Laws (1717), 345, 364.

(*i*) See Select Pleas of the Forest, Selden Society, Vol XIII

## SECT. 2

The Court  
of Attach-  
ments—  
Court of  
attachmentsSECT. 2—*The Court of Attachments.*

**238** The Court of Attachments, Woodmote, or Forty Days' Court, should be held before the verderers (*j*) of the forest once in every forty days (*k*). Its jurisdiction is to inquire into all offences committed in the forest, whether against vert or venison (*l*).

Under its ancient jurisdiction this court inquires into and receives attachments and presentments of the foresters and keepers, and enrolls them for the purpose of presenting them to the swainmote. The court has no power to convict offenders or to proceed to judgment (*m*), except where the trespass is under the value of fourpence, in which case the verderers in the Court of Attachment have power to assess the fine, and cause the same to be levied to the use of the King, which must be entered on the roll (*n*).

All unlawful encroachments in forests may be inquired into by the verderers in the Court of Attachments, and the persons who made and continued them prosecuted in these courts, and fined by the verderers for every such offence in a sum not exceeding £20, to be recovered before a justice of the peace, and the encroachment may be ordered to be abated. The forest officers may present all encroachments to the court, which is empowered to fine them for neglect. If it is alleged by the defence that the place in question was beyond the limits of the forest, the verderers have no power to determine the cause, but must certify it to the Attorney-General. The right of the Crown to proceed by information or any other legal process is expressly preserved (*o*).

SECT. 3—*The Court of Regard*Court of  
regard

**239** The Court of Regard or Survey of Dogs was directed to be held every third year (*p*) by the Regarders (*q*) of the Forest to see what dogs are expeditated (*r*) and what not. All dogs (*s*) not expeditated were to be presented and their owners amerced 3s. (*a*). This court, although the statute relating to it has not been repealed, has been obsolete for centuries (*b*).

(*j*) See p 115, *post*

(*k*) *Carta de Foresta* (1217), c. 8, see 4 Co Inst. 289.

(*l*) The rolls of the Court of Attachments of Epping Forest, 1713-1848 are published in four volumes by order of the Epping Forest Commissioners.

(*m*) *Manwood, Treatise of the Forest Laws* (1717), pp 23-25.

(*n*) *Ibid.*, p 26. "But it is to be observed that no man ought to be attached by his body for vert or venison, unless he be taken with the manner within the forest, otherwise the attachment must be by his goods" (4 Co Inst. 289).

(*o*) 52 Geo 3, c 161, ss. 11, 13, 15, repealed and re-enacted by the Crown Lands Act, 1829 (10 Geo 4, c 50), ss. 100, 102, 103, 104.

(*p*) 4 Co Inst. 289.

(*q*) See p 115, *post*.

(*r*) "That is, three claws of the forefeet shall be cut off by the skin" (*Carta de Foresta*, c 6).

(*s*) Only mastiffs are liable to be expeditated (*Manwood, Treatise on the Forest Laws* (1717), 112, 113). Formerly no other dogs, except by special grant, were allowed to be kept in a forest (*Lewis, Historical Inquiries concerning Forests and Forest Laws*, p 37).

(*a*) *Carta de Foresta*, c 6.

(*b*) The Court of Regard had some other duties, see title CONSTITUTIONAL LAW, Vol VII., p 183.

SECT 4.—*The Court of Swainmote.*

SECT 4.  
The Court  
of  
Swainmote.  
Court of  
Swainmote.

240 The Court of Swainmote (c), Sweynmote, Swanimote, or Swainemote was held before the verderers as judges by the steward of the swainmote (d) three times in the year, and no more (e). All offences against vert (f) or venison (g) could be presented at the next swainmote before the foresters, verderers, regards, agisters, and other ministers of the forest (h). All freeholders and all other honest and lawful men of the forest were bound to attend (i). The pleas in this court were called *placita forestæ* (h). The jurisdiction extended to offences committed in the purcheus (l) of the forest (m). After the court was opened the steward charged the jury to inquire into offences concerning—(1) gathering of acorns, (2) agistments to the hurt of deer, (3) assarts (n) newly made, (4) browse cut by warden or foresters, (5) burning heath, fern, or ling, (6) straightening of churchways, (7) crabs growing in the forest, (8) deer killed without warrant, (9) dogs, (10) extortion by forest officers, (11) commoning sheep at fawning time, (12) fences, (13) number of foresters; (14) foxes killed without warrant, (15) goats in the forest, (16) hares killed without warrant, (17) taking hawks' or herons' eggs; (18) unringed hogs, (19) unlicensed hogstyes, (20) hunting the King's deer within seven miles of the forest within forty days before or after the King's hunting, (21) inclosures, (22) meers (o), (23) mills, (24) mines, (25) nets, (26) pannage (p), (27) taking partridges' or pheasants' eggs, (28) pounding cattle out of the county, (29) hunting in the purcheus, (30) purprestures (q);

(c) "'Swainmote' is derived of *swain*, that is, *Saxonice*, *minister*, and *mote* or *gemote*, which is *curia*, i. e. *curia ministrorum forestæ*, so called because it is but a preparative for the Justice Seat" (4 Co Inst 289)

(d) "The steward, custodian, keeper, or lord warden of the forest, was not a judicial officer although a claim was sometimes made by them to hold the swainmote. The officer here referred to is the steward of the swainmote, who should be a learned man, especially in the laws of the forest" (Manwood, Treatise of the Forest Laws (1717), p 340)

(e) (1217) Carta de Foresta, c 8. See title CONSTITUTIONAL LAW, Vol VII, p 183

(f) See title CONSTITUTIONAL LAW, Vol VII, p 181, note (p)

See *ibid*, note (g).

Manwood, Treatise of the Forest Laws (1717), pp 338, 339

34 Edw 1, Ordinatio de Foresta, c 1, 2, 1 Edw 3, stat 2, c 2

(h) Manwood, Treatise of the Forest Laws (1717), p 336

(i) See title CONSTITUTIONAL LAW, Vol VII, p 184

(m) Manwood, Treatise of the Forest Laws (1717), p 344

(n) "*Assertum*, assert, is so called of the effect, as some hold, and is derived, say they, of *ad* and *sero*, *assero*, because of wood grounds, marshes, or waste grounds, that are converted to be sown with corn. Others fetch it other ways, but we hold that it is derived of the French word *essarter*, to grub up, or clear a ground of wood" (4 Co Inst. 306, 307)

(o) "Carrying away or removing any meere, stones, or other metes, marks, or boundaries of the forest" (Manwood, Treatise of the Forest Laws (1717) 312)

(p) "*Pannagium* is the mast of such trees, which bear fruit to feed hogs, or the money made of such mast" (Manwood, Treatise of the Forest Laws (1717), p 227).

(q) "A purpresture in the King's forest is any building or inclosure, or using any liberty or privilege there without warrant so to do" (Manwood, *supra*, p 304) See title CONSTITUTIONAL LAW, Vol VII, p 183, note (p)

SECT. 4  
The Court  
of  
Swainmote.

(31) salteries, (32) sheep, (33) sheep-houses, (34) suits and services; (35) surcharge of the forest (*r*), (36) timber or trees cut down and other offences against vert, (37) waifs and strays, (38) straightening ways, (39) abuse of warrants to take vert or venison, (40) getting underwood, and (41) surcharges of the foresters and other ministers of the forest, and their oppressions brought upon the people (*a*).

The Court of Swainmote had only power to try offences, but not to give judgment or to award execution, for that was reserved to the Justice Seat (*b*). Swainmotes are still held, but they are mere formalities. Persons indicted in this court as common malefactors of the King's venison in the forest are liable to be outlawed (*c*).

SECT 5—*The Justice Seat.*

The Justice  
Seat or  
Eyre

**241** The Justice Seat or Eyre was the principal court of the forest and a court of record (*d*). It was held before the Chief Justice in Eyre or his deputy. On the abolition of the offices of Chief Justice and Justices in Eyre of His Majesty's Forests, Chases, Parks, and Warrens, north and south of Trent respectively (*e*), all the powers and authorities belonging to the said offices were vested in the First Commissioner of Woods (*f*).

No Court of Justice Seat has been held since 1662, and it may be regarded as obsolete, but it may be revived by the King's writ.

At the Justice Seat all trespasses within the forest, all claims of franchises, liberties, or privileges, and all pleas and causes whatever therein arising were heard and determined (*g*).

The court had also jurisdiction to try presentments enrolled in the inferior courts of the forest, and to give judgment on convictions in the Court of Swainmote (*h*), and when judgment had been entered up a warrant was issued to the officers of the forest to apprehend the offenders (*i*).

SECT 6—*Judicial and other Officers of the Forests*

The Justices  
in Eyre

**242** As the Chief Justice in Eyre was commonly a man of greater dignity than of knowledge in the laws of the forest, there were associated to him persons appointed by the King, who, together with the Chief Justice, were to determine all pleas of the forest,

(*r*) "*Superoneratio forestæ* is when a commoner in the forest putteth on more beasts than he ought, and so surchargeth the forest" (4 Co Inst 293)

(*a*) 34 Edw 1, *Ordinatio de Foresta*, c 4

(*b*) 4 Co Inst 289

(*c*) Manwood, *Treatise of the Forest Laws* (1717), p 344

(*d*) Lewis on Forests and Forest Laws, pp 39, 40, Manwood, *Treatise of the Forest Laws* (1717) pp 57—79, 4 Co Inst 291

(*e*) 57 Geo 3 c 61, s 1

(*f*) Crown Lands Act, 1829 (10 Geo 4, c 50), s 95

(*g*) *Ibid* 291, 315

(*h*) See Forest of Waltham. Presentments etc at Forest Courts respecting Assarts, Purprestures and unauthorised inclosures recorded before 1713, and Miscellaneous Presentments of Forest Courts recorded before 1713, published by order of the Epping Forest Commissioners

(*i*) 1 Edw. 3, stat 2, c. 2, *Assisa de Foresta*



with a patent of *si non omnes* and a writ *de admittendo*. The Chief Justice and these associates were called *capitales justiciarii forestal*. A similar course apparently would have to be followed in case the First Commissioner of Woods should hold a court of justice-seat (*k*) There was also a steward of the swainmote (*l*).

SMOKE &  
JUDICIAL  
and other  
Officers of  
the Forests

**243** Verdeiers (*viridarii*) (*m*) are judicial officers of the forest chosen in full county by the King's writ Their office is to observe and keep the laws of the forest, and to view, receive, and enrol all attachments and presentments of trespasses as to vert and venison, and to do equal right and justice to rich and poor There are usually four verderers in each of the King's forests (*n*)

Verderers.

**244** Regarders are good and lawful men chosen by virtue of the King's writ and elected by the freeholders and sworn in by the sheriff (*o*) Their duties are to look after the woods and timber in the King's forest, to view and make strict inquiry in every bailiwick of the forest as to offences relating to vert and venison, to cause all forfeitures to be enrolled and to inquire of all wastes, purprestures, and assarts (*p*) of the forest, and to make a "regard" or perambulation of the forest before the holding of a court of judgment-seat (*q*) There should be twelve regarders in a forest

Regarders.

**245** The ranger is an officer only appointed in the case of forests having known and acknowledged purlieus (*r*) His duties are confined to the purlieu, and consist in returning back into the forest deer coming thence, and inquiring into offences committed in the purlieu (*s*)

Rangers

The agister's (*t*) duties are to collect the dues for cattle etc pasturing in the forest, and to account to the judge at the next justice seat He is also to prevent trespasses being done by the cattle in the forest Four agisters should be appointed in each forest (*a*)

Agisters

The forester's duties were to preserve the vert and venison, to watch them, to attack offenders or trespassers in the forest, and to present all manner of offences in the forest at the next court of attachment or swainmote (*b*)

Foresters

The woodward's duties were to look after the woods, and to be present at all the courts of attachment and other courts of the forest (*c*).

Woodwards

(*k*) 4 Co Inst 315

(*l*) See p 113, *ante*

(*m*) *Viridarius à viridi*, vert

(*n*) 4 Co Inst 292

(*o*) Manwood, Treatise of the Forest Laws (1717), p 319, where the form of oath is given

(*p*) "Grubbing up, or felling woods and converting the soil where they did grow into tillage" (Manwood, Treatise of the Forest Laws, p 19)

(*q*) Manwood, Treatise of the Forest Laws (1717), pp 317, 321 etc, as to the court of regard, see p 112 *ante*

(*r*) See title CONSTITUTIONAL LAW, Vol VII, p 184

(*s*) 4 Co Inst 304

(*t*) From *gyeer*, to lie down (4 Co Inst 293).

(*a*) 4 Co Inst 293

(*b*) Manwood, Treatise of the Forest Laws (1717), pp 162—167

(*c*) *Ibid*, pp 389—392

PART XII.  
Court of  
Chivalry

Court of  
Chivalry

## Part XII.—Court of Chivalry.

**246** The Court of Chivalry (*d*) takes cognisance of questions relating to the right to use armorial ensigns and bearings (*e*) An appeal lies to the King from the decisions of the Court of Chivalry in case of arms (*f*) In 1695 an attempt was made by the Court of Chivalry to prevent an undertaker painting unauthorised arms on coaches and palls, but prohibition went against this as not being *causa armorum* (*g*) The court fell into disuse, but in 1792 an attempt was made to revive it, and a court was held in the Painted Chamber, Westminster, on the 3rd and 30th of March, at which complaints were exhibited against various persons for using divers ensigns of honour contrary to the law of arms, but the court adjourned without deciding any case, and has never since been

(*d*) The Court of Chivalry was originally a court, held before the Lord High Constable of England and the Earl Marshal jointly, which had a civil jurisdiction relating to redressing injuries of honour and encroachment on armorial ensigns, precedence and distinctions of families, and a criminal jurisdiction over persons in military service, especially in foreign parts in time of war The criminal jurisdiction practically ceased on the attainder of Edward Stafford Duke of Buckingham in 1521, when the office of Lord High Constable was forfeited to the Crown, and the remaining jurisdiction of the Lord High Constable, namely, that of presiding at a wager of battel, was exercised by a constable appointed *pro hac vice* This was a separate jurisdiction of the Lord High Constable, independent of the Court of Chivalry The last appointment for this purpose was in 1631 for the trial of the appeal of high treason by *Donald, Lord Sea v Ramsay* (1631) (3 State Tr 483), but the letters patent were revoked before the battel (by 59 Geo 3, c 46) This jurisdiction also ceased on the abolition of appeal of murder and wager of battel in 1819 After there ceased to be a Lord High Constable the Court of Chivalry was held before the Earl Marshal alone The Court of Chivalry in early times attempted to draw to itself pleas concerning the common law, but in 1381 (8 Ric 2, c 5) and again in 1389 (13 Ric. 2, c 2) statutes were passed to prevent this abuse

This court is called *curia militaris* (Rot Pat Hen 4), and the Marshal Court (Rot Parl 2 Hen 6, note 9, 4 Co Inst 123)

*Comes stabuli*, count or officer of the stable (New English Dictionary, Vol II, 871) "To the constable it appertaineth to have consuance of contracts and deeds of arms, and of war out of the realm, and also of things that touch war within the realm which cannot be determined or discussed by the common law" (4 Co Inst. 123) The only remaining exercises of the office of Lord High Constable are the ceremonial functions at a coronation, on which occasion an appointment is made *pro hac vice*

"Marshal," from the old Teutonic *marhos*, a horse, and *skalkoz*, a servant (New English Dictionary, Vol VI, p 186), originally meant a farrier, but came in time to signify one of the chief functionaries of a royal household or court In 1189 the office was held by the Earl of Pembroke, and since then it has never been held by any under the dignity of an earl Thus the former title of Marshal of England became altered to that of Earl Marshal The office is hereditary The only remaining functions, except the ceremonial ones on the occasion of a coronation are the jurisdiction in the Court of Chivalry and the superintendence of the College of Arms, with the power to grant armorial bearings on behalf of the Crown

(*e*) Notably in the case of *Scroop v Grosvenor* (1388), Rot Let Claus 12 Ric. 2, memb. 4, and a special roll (14 Ric 2) entitled "Rot. Process in curia militari in causa armorum int' Ric'm le Scroop, chevalier, et Robertum Grosvenor, chevalier."

(*f*) 4 Co Inst. 125

(*g*) *Oldis v. Denmille* (1695), Show Parl. Cas 58

held (*h*), although no statute has ever abolished or interfered with its authority. The three kings-at-arms (*i*) and the six heralds (*k*) are attendants upon this court (*l*).

PART XII.  
Court of  
Chivalry

## Part XIII.—Court of Claims.

### SECT 1—*Constitution and Jurisdiction*

**247** On the occasion of a coronation the Sovereign issues a commission to certain high officers of state, peers, and judges to hear petitions and claims relating to services to be done and performed at the coronation in respect of the tenure of manors, lands, and hereditaments (*m*) held by the tenure of grand serjeantry (*n*) Claims in respect of services connected with the parts of the ceremonial performed in Westminster Hall and with the procession are excluded from the consideration of the commission when those ceremonials are omitted at the coronation (*o*)

Court of  
Claims.

The court has power to decide on these claims, subject to the pleasure of the Sovereign, who may withdraw a claim from the commission, and transfer it to some other tribunal (*p*) The court may, however, refer any claim to the Sovereign's pleasure (*q*).

### SECT 2—*Procedure and Officers*

**248** In 1901 sixty years had elapsed since the last Court of Claims had been held, and very little evidence was forthcoming as to the procedure The court, however, proceeded to issue a notification (1) that petitioners need not appear in person if not summoned, (2) that petitioners might appear by counsel, solicitors, or agents, and (3) that, where there was no counterclaim, evidence that the petitioner represented a person whose claim was admitted on the last occasion was sufficient As to evidence, the strict rules of evidence were relaxed so far that the court did not inquire too strictly into whether documentary evidence was produced from

Procedure.

(*h*) Noble, *History of the College of Arms*, pp 373–375

(*i*) Garter, Clarenceux, and Norroy

(*k*) Chester, Lancaster, Somerset, Richmond, Windsor, York

(*l*) 4 Co Inst 125 See also title *PEERAGES AND OTHER DIGNITIES*

(*m*) The first Court of Claims of which a record exists was held on the occasion of the coronation of Richard II, in 1377, when John, King of Castile and Leon and Duke of Lancaster, presided as Lord High Steward The *processus factus* of this court is on the Close Roll of 1 Ric 2, memb 45, and is printed in Legg's *English Coronation Records*, p 131 See title *CONSTITUTIONAL LAW*, Vol VI, p 329

(*n*) See Littleton, *Tenures*, s 153 "He which holdeth by grand serjeantry ought to do some special service to the King"

(*o*) See proclamation of 26th June, 1901, *London Gazette*, 28th June, 1901, p 4329.

(*p*) As, for instance, in 1901, the opposing claims to the office of the Lord Great Chamberlain were transferred to the Committee of Privileges of the House of Lords

(*q*) As in the case of the claim of the Earl of Huntingdon in 1838 to carry one of the swords.

**SECT. 2**  
**Procedure**  
**and Officers**

the proper custody. Petitioners had to give notice whether they appeared in person or by counsel or agent (r)

The Clerk of the Crown and the registrar of the Privy Council acted as the clerks of the court

## Part XIV.—Courts held by the Sheriff.

### SECT. 1—*In General*

**Jurisdiction**  
**of the sheriff**

**249** The jurisdiction of the sheriff in ancient times was both civil and criminal, and was exercised respectively in the sheriff's county court and the sheriff's tourn. The latter of these, which was a court of record, has been abolished (s), while the former, which is not a court of record, need only be held for the purpose of an election, or for the due execution of some writ, or for some other specific purpose (t). The sheriff at one time had also power to hold pleas of the Crown and to take inquests whereby persons might be indicted, but this jurisdiction has been abolished (a).

### SECT. 2—*Inquisitions on Writs of Elegit*

**Elegit.**

**250.** By the Statute of Westminster II (b) a judgment creditor is entitled, instead of having a writ of *fi fa*, to have a writ directing the sheriff to deliver to him all the chattels (c) of the defendant (saving only his oxen and beasts of the plough) and the one half of his land until the payment of the sum due under the judgment. The whole of the defendant's land is now liable to be delivered (d).

**Inquisition**

**251** The execution of a writ of *elegit* necessitates an inquisition on receipt of the writ. The sheriff proceeds at once to summon a jury of twelve to inquire as to what lands the judgment debtor holds in the county and what is their value. The jury are charged and sworn to well and truly try of what lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, the judgment debtor, or anyone in trust for him, is seised or over which he has a disposing power for his own benefit. The proceedings are *ex parte*, and it is not necessary

(r) See Wollaston's Coronation Claims.

(s) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (1). By s. 40 (1) every court leet, court baron, law day, view of frankpledge, or other like court held at the passing of the Act (16th September, 1887), shall continue to be held on the accustomed days and places. "The tourn is a court of record holden before the sheriff the ancient institution whereof was before Magna Carta, to hear and determine all felonies (death of man excepted) and common nuisances" (4 Co. Inst. 260). See, generally, title **SHERIFFS AND BAILIFFS**.

(t) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (1), (2). The sheriff's county court had not jurisdiction in actions of debt or damage wherein more than 40s. was claimed, nor in actions of trespass *vi et armis* (4 Co. Inst. 266). The sheriff's county court was in use until 1846, when the establishment of the statutory county courts caused it to fall into disuse.

(a) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (3). See, however, *stat* (1354) 28 Edw. 3, c. 9, repealed by the Act of 1887.

(b) Stat. (1295) 13 Edw. 1, c. 18.

(c) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 146.

(d) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 11.

to give notice of them to the judgment debtor (c). As the inquisition is not conclusive against the judgment debtor, it is sufficient to give *prima facie* evidence of the title. The finding of the jury, whether in favour of the creditor or of the debtor, may be set aside by the court (f), and the sheriff may be directed to take a new inquisition (g). The sheriff or under-sheriff presides at the inquisition. The writ and inquisition must be returned and filed in the court from which the writ issued (h).

SECT. 2.  
Inquisition  
on Writs of  
Elegit.

### SECT. 3.—Inquiries as to Damages.

**252** When in an action for unliquidated damages or for detention of goods, the plaintiff signs interlocutory judgment (i), in default of appearance, or of pleading, if the court or a judge does not order some other mode of ascertaining the damages or the value of the goods detained (k), the plaintiff can take out a writ of inquiry directed to the sheriff requiring him to summon a jury of twelve men (l) to assess the damages. In counties the jurymen are summoned from the ordinary jury book, and in cities and boroughs in the manner accustomed before 1825, that is, from the lists of burgesses (m). A special jury can only be had by order of the court from which the writ issues (n). It seems that there is no right to challenge jurymen (o). 'Ten days' notice of the time and place of the inquiry must be given to the defendant (p). The plaintiff is entitled to appear by his solicitor and by counsel, but notice of an intention to appear by counsel must be given to the defendant (q). The under-sheriff usually presides, but the sheriff may appoint a deputy for the purpose by a written authority under his seal of office (r). The proceedings at the inquisition are regulated by the Rules of the Supreme Court (s).

Inquiries as  
to damages

The defendant is only entitled to plead in mitigation of damages, and may not, under colour of seeking to reduce the damages, set up allegations which would be a defence or a bar to the action (t).

(c) *Steel v Layner* (1725) 2 Ld Raym 1382

(f) *Putten v Purbeck* (1700), 2 Salk 563, *Barnes v Harding* (1857), 1 C B (N S) 569, *Doe d Evans v Owen* (1831), 2 Cr & J 71, *Fenny v Durant* (1817) 1 B & Ald 40, 41

(g) *Barnes v Harding*, *supra*

(h) 3 Bac Abi Execution, C, 2, Co Litt 269 b, *Johns v Pank*, [1900] 1 Ch. 296

(i) That is, a judgment that the plaintiff is entitled to recover, but leaving the quantum to be ascertained, see R S C, Ord 13, r 5

(k) R S C, Ord 13, r 6

(l) See Juries Act, 1825 (6 Geo 4, c 50), s 52.

(m) *Ibid*, s 50

(n) *Pace v Williams* (1836), 5 Dowl 160

(o) Mather, Sheriff and Execution Law, p 409 (2nd ed., 1903, p 506)

(p) R S C, Ord 36, rr 14, 56. See *Beetley v Parkington (Sir H)* (1729), 1 Barn (K B) 233, *Williams v Smith* (1779), 1 Doug (K B) 198

(q) See *Elliot v Nichol* (1818), 5 Price, 641

(r) In the City of London the secondary is the deputy to hold the inquiry

(s) R S C, Ord 36, rr 34—37, 56. Where the ascertainment of the damages is a matter of calculation, the court or a judge may direct them to be ascertained by an officer of the court instead of by means of a writ of inquiry (R S C, Ord 36, rr 57, 57A). See Yearly Supreme Court Practice, 1909, p 103

(t) *Speck v Phillips* (1839), 5 M & W 279.

**SECT. 3.**  
**Inquiries**  
**as to**  
**Damages.**

The finding of the jury can be set aside on the ground of misdirection (a) or of being contrary to the weight of evidence (b). The application for a new trial must be made to the Court of Appeal, and not to a divisional court (c).

If the sheriff does not make a return in due time, he will be compelled to do so by a rule (d). The sheriff may return that he and the jury are in doubt and pray the advice of the court (e). If the sheriff return that the jury found no damages, he is not responsible for the default of the jury (f).

**SECT. 4.—Court to assess Compensation under the Lands Clauses Act, 1845**

**Compensation**  
**courts**

**253** Where lands over the value of £50 are compulsorily taken or injuriously affected under the Lands Clauses Act, 1845 (g), if the owner of the lands taken does not require arbitration, the compensation payable to such owner is to be ascertained by a jury presided over by the sheriff (h).

## Part XV.—Palatine Courts.

**SECT. 1—Court of the Duchy Chamber of Lancaster**

**Court of**  
**Duchy**  
**Chamber.**

**254** This court, which is not a court of record, may be held before the Chancellor of the Duchy of Lancaster or his deputy. It had jurisdiction concerning equities relating to lands holden of the King in right of the Duchy of Lancaster (i), whether situated within the county palatine of Lancaster or not. This jurisdiction was not exclusive (k). The proceedings were conducted as on the equity side in the old Courts of Exchequer and Chancery (l). This court has never been abolished, but has not sat for a long period (m).

**SECT. 2—Chancery Court of the County Palatine of Lancaster.**

**SUB-SECT. 1—Constitution**

**Lancaster**  
**Court of**  
**Chancery.**

**255** By a charter of Edward III. dated the 6th March, 1351 (n), there was granted for his life to Henry, Duke of Lancaster (*inter*

(a) *Gainsford v Carroll* (1824), 2 B & C 624

(b) *Kingston v Haychurch* (1819), 1 Oht. 644

(c) *William Radam's Microbe Killer Co., Ltd v Leuther*, [1892] 1 Q B 85.

**C A**

(d) *Stockdale v Hansard* (1840), 8 Dowd 297

(e) *Dalton, Office of Sheriff*, 280

(f) *Pettifer's Case* (1803), 5 Co Rep 32 a, 32 b

(g) 8 & 9 Vict. c 18

(h) *Ibid*. See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI, p 86

(i) *Owen v Holt* (1615), Hob 77, *Fisher v Patten* (1671), 2 Lev. 24, *Case of the Duchy of Lancaster* (1561), 1 Plowd 212. See also title CONSTITUTIONAL LAW, Vol VII, p 217

(k) *Lamington v Wotton* (1631), 1 Rep. Ch [\*52], *Fleetwood v. Pool* (1660), Hard. 171. See also cases in Tothill under title "Duchy."

(l) 4 Ch. Inst. 206

(m) The last pleading on the file is in *Ord v Wood*, March 13th, 1835

(n) Hardy, Charters of the Duchy of Lancaster, p. 9

*alia*), a court of chancery, a chancellor (*a*), and such other *jura regalia* (*p*) in the county of Lancaster as pertained to a count palatine. On the 28th February, 1377 (*a*), a similar charter was granted for the term of his life to John, King of Castile and Leon, Duke of Lancaster. On 16th February, 1390 (*b*), Richard II. by charter granted these *jura regalia* to the Duke of Lancaster and his heirs male. Henry IV on his accession by a charter of the 14th October, 1399 (*c*), declared that these *jura regalia* were not to be changed by the King's accession and severed the Duchy from the Crown, the reason being that he had the Duchy by a sure and indefeasible title, but specially because his title to the Crown was not so assured, as the right to the Crown was in the heir of Lionel, Duke of Clarence, second son of Edward III (*d*). Since that time the county palatine of Lancaster has remained in the possession of the Sovereign as an inheritance separate from the Crown.

The county palatine of Lancaster under these charters has a court called the Court of Chancery of Lancaster, which is now regulated by a number of statutes, also an Attorney-General of the County Palatine and Duchy of Lancaster (*e*).

Secy. R.  
Court of  
County  
Palatine of  
Lancaster.

#### SUB-SECT 2—Jurisdiction and Appeals.

**256** The Court of Chancery of Lancaster has within the county palatine the like powers and jurisdiction as the High Court of Justice in its Chancery Division (*f*). The jurisdiction is thus unlimited in amount, although limited in area. The jurisdiction is concurrent with that of the High Court of Justice (*g*), and depends upon the existence within the jurisdiction of the persons, though not of the property, in question (*h*). If, however, any action is

Jurisdiction

(*a*) The first Chancellor of the Duchy was Sir Henry de Haydock, 1332, and the first Chancellor of the County Palatine was Thomas de Thelwall, appointed the 16th April, 1377 (Baines, *History of Lancashire*, Vol. i., p. 182).

(*p*) Until 1873 the County Palatine had also its own Court of Common Pleas, and special commissions of assize were issued in regard thereof (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 99). The appointment of justices of the peace is not affected by this section, and they are still appointed by the Chancellor of the Duchy.

(*a*) Hardy, *Charters of the Duchy of Lancaster*, p. 32.

(*b*) *Ibid.*, p. 65.

(*c*) *Ibid.*, p. 102.

(*d*) 4 Co. Inst. 203.

(*e*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), Court of Chancery of Lancaster Act, 1864 (17 & 18 Vict. c. 82), Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), Chancery Amendment Act, 1868 (21 & 22 Vict. c. 27), Chancery Regulation Act, 1862 (25 & 26 Vict. c. 42). Both these latter Acts were repealed by the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), with the proviso that they are to be construed as if contained in a local and personal Act relating to the Court of Chancery of Lancaster.

(*f*) Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 3.

(*g*) *Wynne v. Hughes* (1859), 26 Beav. 377, *Re Yates, Bradley v. Stelfox* (1862), 8 De G. J. & Sm. 402, *Re Alison's Trusts and Re Johnson (Infants)* (1878), 8 Ch. D. 1, 9, C. A. See also the report in 26 W. R. 450, per JESSEL, M. R., at p. 458. "It must be remembered that the Palatine Court and the High Court are co-ordinate jurisdictions."

(*h*) *Re Longendale Cotton Spinning Co.* (1878), 8 Ch. D. 150. See also

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**Lancaster**

commenced in the palatine court which is not within the ancient chancery jurisdiction of the court (i), and would not if commenced in the High Court be assigned to the Chancery Division, it may be transferred to the High Court by the Chancery Court of Lancaster or the Court of Appeal (k)

This court also possesses the summary jurisdiction of the Chancery Division (l), the statutory jurisdiction as to the property of infants and other persons under disability, power to administer assets (m), as well as jurisdiction under the Convoyancing Act 1881 (n), the Trustee Act, 1893 (o), and the Judicial Trustee Act, 1896 (p), and as to money paid into court (q) under the Lands Clauses Act, 1845 (r)

**Jurisdiction**

**257** The court has power to direct that any question of fact arising in a suit or proceeding be tried by a special or common jury before the court itself (s), or to direct an issue to try any question of fact by a jury at the assizes (a)

**Patents**

**258** The Chancery Court of Lancaster is not a court, nor is the Vice-Chancellor a judge, within the meaning of the Patents and Designs Act, 1907 (b), the Vice-Chancellor has not power to grant a certificate that the validity of a patent came into question in an action for infringement so as to entitle the patentee to solicitor and client costs in a subsequent action for infringement unless the court otherwise directs (c)

**Appeal**

**259** An appeal lies from this court to the Court of Appeal (d), and thence to the House of Lords (e)

*Dunmore v Wharum* (1898), 67 L. J. (CH) 221, *Re State Banking Corporation, Ltd* (1907), 51 Sol Jo 265

(i) S 23 of the Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict c 43), abolished the jurisdiction of the Palatine Court over persons of unsound mind

(k) Chancery of Lancaster Act, 1890 (53 & 54 Vict c 23), s 5

(l) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict c 43), s 11

(m) Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict c 82), s. 12

(n) 44 & 45 Vict c 41, s 69 (9)

(o) 56 & 57 Vict c 53, s 46

(p) 59 & 60 Vict c 35, s 2

(q) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict c 43), s 12

(r) 8 & 9 Vict c 18

(s) Chancery Amendment Act, 1858 (21 & 22 Vict c 27), s 3, *Yates v Kyffin-Taylor and Wark*, [1899] W N 141

(a) Chancery Regulation Act, 1862 (25 & 26 Vict c 42), s 2, *Yates v Kyffin-Taylor and Wark*, *supra*

(b) 7 Edw 7, c 29

(c) *Ibid*, s 35, see *Proctor v Sutton Lodge Chemical Co* (1888), 5 R P O 184

(d) Judicature Act, 1873 (36 & 37 Vict c 66), s 18 (2) By the Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict c 82), s 1, the Chancellor of the Duchy and the two Lords Justices of Appeal were constituted the Court of Appeal in Chancery of the County Palatine, with an appeal thence to the House of Lords (*ibid*, s 3) The Judicature Act, 1873 (36 & 37 Vict c 66), s 18, transferred this jurisdiction to the Court of Appeal (see p 62, *ante*), and the sections of the Act of 1854 were repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict c 59)

(e) Appellate Jurisdiction Act, 1876 (39 & 40 Vict c 59), s 3 As to appeals, see *Lee v Nuttall* (1879), 12 Ch D. 61, O A, *Kershaw v Vickers* (1888), 3 Ch. App 513



SUB-SECT 3.—*Judges*

**260** The Chancellor of the Duchy and County Palatine formerly exercised judicial functions. The appointment now, however, is of a political nature, and carries with it as a rule a seat in the Cabinet. The Vice-Chancellor, with the exception of certain interlocutory matters (*f*), performs all the judicial functions. He is appointed on the nomination of the Chancellor of the Duchy by letters patent from the Crown, which are expressed to be during pleasure, but in point of fact are *quam diu se bene gesserit*. Whenever the office of Chancellor of the Duchy and County Palatine of Lancaster becomes vacant, the Vice Chancellor continues in office subject to the powers of the succeeding Chancellor (*g*).

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Lancaster.  
—  
The Vice-  
Chancellor

SUB-SECT 4.—*Procedure.*

**261** The Chancellor of the Duchy and County Palatine has statutory powers (*h*) to make rules of procedure subject to the approval of the authority for the time being empowered to make rules for the Supreme Court. Under these powers rules of procedure have been made (*i*) which assimilate the procedure of the Palatine Court to that of the High Court of Justice. Rules have also been made under the Settled Estates Act, 1877 (*k*), the Settled Land Act, 1882 (*l*), and under the Trustee Act, 1893 (*m*). There are also rules dealing with court fees (*n*), solicitors' costs (*o*), suitors' fund and fee fund accounts (*p*). The Chancellor of the Duchy has power to make rules regulating proceedings under the Conveyancing and Law of Property Act, 1881 (*q*).

In cases where any of the parties are out of the jurisdiction of

Party out of  
jurisdiction

(*f*) The Chancery of Lancaster Rules, Ord. 48.

(*g*) Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 7.

(*h*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), ss. 1—1, Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 6.

(*i*) The Chancery of Lancaster Rules, 1884, which were amended by the Chancery of Lancaster Rules, 1887, by a general order and rule dated 19th December, 1893, and by the Chancery of Lancaster Rules, 1894. These rules are printed as now in force in Statutory Rules and Orders Revised, Vol. VI, Lancaster, pp. 23, 223, Snow and Winstanley, Chancery Court of Lancaster, p. 42.

(*l*) 40 & 41 Vict. c. 18 (Settled Estates Act, Chancery of Lancaster Orders, 1880, Statutory Rules and Orders Revised, Vol. VI, Lancaster, p. 1, Snow and Winstanley, p. 205).

(*l*) 43 & 46 Vict. c. 38 (Settled Land Act, Chancery of Lancaster Rules, 1883, Statutory Rules and Orders Revised, Vol. VI, Lancaster, p. 12, Snow and Winstanley, p. 212).

(*m*) 56 & 57 Vict. c. 53 (Rules under Trustee Act, 1893, Statutory Rules and Orders Revised, Vol. VI, Lancaster, p. 258).

(*n*) See Statutory Rules and Orders Revised, Vol. VI, Lancaster, pp. 223, 243, 257, Snow and Winstanley, pp. 218, 244.

(*o*) See Statutory Rules and Orders Revised, Vol. VI, Lancaster, pp. 232, 243, Snow and Winstanley, pp. 229, 244. As to costs and court fees see Orders of 27th and 28th November, 1884, and *Re Manchester Real Ice Slating and Supply Co.*, [1900] 1 Ch. 573, C.A.

(*p*) See Statutory Rules and Orders Revised, Vol. VI, Lancaster, pp. 244, 255, Snow and Winstanley, p. 246, Statutory Rules and Orders, 1903, Addenda, pp. 1009, 1010.

(*q*) 44 & 45 Vict. c. 41, s. 69 (9).

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the court the Court of Appeal may either direct the cause to be transferred to the High Court or service to be effected out of the jurisdiction (r). Where a decree or order of the court cannot be enforced because the party to be bound thereby is out of the jurisdiction, it can be enforced by making it an order of the High Court (s).

The Vice-Chancellor has power to hear interlocutory matters out of the jurisdiction (a), but he can only hear causes out of the jurisdiction by consent (b)

**SUB-SECT 5 — Officers**

**Officers**

**262** There is an Attorney-General of the County Palatine and Duchy of Lancaster. There are three district registrars of the Liverpool, Manchester, and Preston districts respectively, with one assistant registrar at Liverpool and two at Manchester. The registrars are appointed by the Chancellor of the Duchy and County Palatine, and hold office during his pleasure. The registrars in the Palatine Court perform the duties which the Masters of the Supreme Court (Chancery Division and Taxing Office), the Chancery Registrars, and the clerks in the Central Office perform in the High Court (c).

There is also a comptroller, who is appointed by the Chancellor. His duties are to check receipts and payments of suitors' moneys.

The other officers are a seal-keeper and a cursitor (d).

**SECT 3 — Chancery Court of the County Palatine of Durham.**

**SUB-SECT 1 — Constitution.**

**Durham**  
**Chancery**  
**Court**

**263** Even before the Norman Conquest the bishops of Durham appear to have claimed palatinate or quasi-palatinate rights and jurisdiction. This prescriptive franchise was confirmed by charters of William the Conqueror, William Rufus, Henry I, and Henry II (e). In the reign of Edward I Anthony Bek, the then Bishop, was summoned to appear before the King's Justices under the Statute of "Quo Warranto" (f) to show how he held his franchise, and on his refusal to appear his franchise was seized into the King's hands in the name of distress. The Bishop appealed to the King and his council in Parliament, who held that he was entitled

(r) Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict. c 82), s. 8. See *Re Hatmough, Seigenson v Beloe* (1883), 24 Ch D 280, C A., *Cooke v Smith* (1890), 44 Ch D 72, C A., *Waltham v Goodier* (1855) 3 W. R. 352, *Walker v. Dorda* (1887), 37 Ch D 188, C A.

(s) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict c 43), s. 15

(a) *Ibid.*, s. 13

(b) Chancery of Lancaster Rules, Ord. 33, rr. 1, 2.

(c) *Ibid.* Ord. 48

(d) *Curators (clerici de cursu)* were clerks of the Court of Chancery who made out original writs, see title *ACTION*, Vol. I, p. 32

(e) 4 Co Inst. 216. See also Bishop William de St. Carleph's charter to convent of Durham (1082). *Registrum Palatinum Dunelmense*, Vol. I, pp. lxxi—lxxvii. See also *Walthamson, Palatine Court of Durham Act, 1889*, pp. 3—14

(f) 18 Edw. 1, Statute "De quo Warranto" (1289—1290)

to *jura regalia* between Tyne and Tees, and in Northumberland and Bedlington. In 1886 the *jura regalia* of the Bishop of Durham were transferred to the Crown (g). The only one now surviving is the Court of Chancery of the County Palatine of Durham, the exercise of the jurisdiction being now assimilated to that of the High Court of Justice (h).

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Court of the  
County  
Palatine of  
Durham.

#### SUB-SECT 2—Jurisdiction

264. The jurisdiction of the court is unlimited in amount, but limited in area to the county palatine, which certainly includes the whole of the present county of Durham, and possibly other districts (i). The jurisdiction apart from statute is the old jurisdiction of the High Court of Chancery within the county palatine. This is a jurisdiction *in personam* over the person within the area of jurisdiction, extending, in effect, to property wherever situate (k), but enforceable only, apart from statute, against the person, and not the property. This jurisdiction has been supplemented by statutes enabling orders of the Palatine Court to be enforced by making them orders of the High Court of Justice (l), empowering the court to deal with the property of infants and other persons under disability, the administration of assets (m), giving to it the summary

Jurisdiction.

(g) Durham (County Palatine) Act, 1836 (6 & 7 Will 4, c 19). The jurisdiction of the Chancery Court and the Court of Pleas was not altered by this Act. The jurisdiction of the Court of Pleas was transferred to the High Court by the Judicature Act, 1873 (36 & 37 Vict c 66), s 16. See p 62, *ante*, and title CONSTITUTIONAL LAW, Vol VII, p 216.

(h) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47).

(i) Durham (County Palatine) Act, 1836 (6 & 7 Will 4, c 19), defines 'county of Durham' as "including the detached parts of Crickshire, Bedlingtonshire, Northumberland, Allertonshire, and Islandshire, and all other places heretofore within the jurisdiction of the Bishop of Durham, in right of the said county palatine." It has never been decided what the effect of this is of the enactment of the Counties (Detached Parts) Act, 1844 (7 & 8 Vict c 61), annexing detached parts of counties to the county of which it forms part for the purposes of parliamentary elections. It is, however, suggested that an Act of this nature would not effect the *jura regalia* without express enactment. The Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), does not define the area over which the court has jurisdiction.

(k) *Re Longdendale Cotton Spinning Co* (1878), 8 Ch D 150.

(l) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), s 3.

(m) *Ibid*, s 6. The powers conferred on the court by this enactment are under the following statutes—Real property of infants Debt Recovery Act, 1830 (11 Geo 4 & 1 Will 4, c 47), s 11, Infants' Property Act, 1830 (11 Geo 4 & 1 Will 4, c 65), ss 16, 17; Debts Recovery Act, 1889 (2 & 3 Vict c 60), Land Drainage Act, 1845 (8 & 9 Vict c 56), ss 3—5, Partition Act, 1868 (31 & 32 Vict c 40), s 3 (see, however, Partition Act, 1876 (39 & 40 Vict c 17), s 6), Settled Estates Act, 1877 (40 & 41 Vict c 18), ss 4, 10, 49, Conveyancing and Law of Property Act, 1881 (44 & 45 Vict c 41), ss 41, 42, Settled Land Act, 1882 (45 & 46 Vict c 38), ss 59, 60. Personal property of infants Legacy Duty Act, 1796 (36 Geo 3, c 52), s 32, Trustee Act 1893 (56 & 57 Vict c 53), ss 26, 28. Marriage settlements of infants Infants' Settlements Act, 1855 (18 & 19 Vict c 43). Maintenance of infants Infants' Property Act, 1830 (11 Geo 4 & 1 Will 4, c 65), s 32. Property of felons Forfeiture Act, 1870 (33 & 34 Vict c 23), s 28. Investment of moneys of persons under disability Copyhold Acts, 1841, 1843, 1852 (1 & 3 Vict c 7), s 73, 6 & 7 Vict c 23, s 14, 15 & 16 Vict c 51, ss 22, 39), which are now repealed and contained in the Copyhold Act, 1894 (57 & 58 Vict c 46), see

**SECT 8**  
**Chancery**  
**Court of the**  
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**Palatine of**  
**Durham.**

jurisdiction of the High Court (*n*), and the High Court jurisdiction (*o*) under the Charitable Trusts Acts, 1853 to 1869 (*p*), and also the jurisdiction (*q*) under the Partition Acts, 1868 (*r*) and 1876 (*s*), the Settled Estates Act, 1877 (*t*), the Conveyancing Act, 1881 (*a*), and the Settled Land Acts, 1882 (*b*) and 1884 (*c*). There is also jurisdiction under the Trustee Act, 1893 (*d*), and the Judicial Trustee Act, 1896 (*e*). As in the case of the Chancery Court of Lancaster, the jurisdiction is concurrent with that of the High Court of Justice (*f*).

**SUB SECT 3 — Judges**

**The**  
**Chancellor**

**265** The Chancellor of the County Palatine of Durham is the sole judge of the court

He is appointed by warrant under the royal sign manual (*g*)

title *COYNGHORS*, Vol VIII, p 121, Defence Acts, 1842, 1860 (5 & 6 Vict c 91, s 25, 23 & 24 Vict c 112, s 20), Ecclesiastical Houses of Residence Act, 1842 (5 & 6 Vict c 26), Housing of the Working Classes Act, 1890 (53 & 54 Vict c 70), s 20, Schedule, r 20, Lands Clauses Consolidation Act, 1845 (8 & 9 Vict c 18), s 69 Administration of assets Judicature Act, 1873 (36 & 37 Vict c 66), ss 16 & 34, Judicature Act, 1875 (38 & 39 Vict c 77), s 10, Bankruptcy Act, 1883 (46 & 47 Vict c 52), s 125

(*n*) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), s 7 The powers conferred on the court by this section are under the following statutes: *Costum quo vie* Act, 1707 (6 Ann c 72) s 1, Law of Property Amendment Acts, 1809 and 1860 (22 & 23 Vict c 35 23 & 24 Vict c 38), Marriage Act, 1823 (4 Geo 1, c 72), s 17, Custody of Infants Act, 1873 (36 & 37 Vict c 12), s 1, Guardianship of Infants Act 1886 (49 & 50 Vict c 27), Companies Acts, 1862 and 1867 (25 & 26 Vict c 89, 30 & 31 Vict c 131), see now the Companies (Consolidation) Act, 1906 (8 Edw 7, c 69), and title *COMPANIES*, Vol V, Mortgage Debenture Acts, 1865 and 1870 (28 & 29 Vict c 76, 33 & 34 Vict c 20), Railway Companies Act, 1867 (30 & 31 Vict c 127), Life Assurance Companies Acts, 1870-2 (33 & 34 Vict c 61, 34 & 35 Vict c 58, 35 & 36 Vict c 41), Lands Clauses Consolidation Acts, 1845 and 1860 (8 & 9 Vict c 18, 23 & 24 Vict c 106), Public Money Drainage Act, 1846 (9 & 10 Vict c 101), Improvement of Land Act, 1864 (27 & 28 Vict c 114), s 21, Fines and Recoveries Act, 1833 (3 & 4 Will 4, c 74), s 45, Declaration of Title Act, 1862 (25 & 26 Vict c 67), Land Registry Act, 1862 (25 & 26 Vict c 53), Judgments Act, 1864 (27 & 28 Vict c 112), Vendor and Purchaser Act, 1874 (37 & 38 Vict c 78), s 9, Married Women's Property Act, 1882 (45 & 46 Vict c 75), ss 10, 17, Land Tax Redemption Act, 1802 (42 Geo 3, c 116), Local Loans Act, 1875 (38 & 39 Vict c 83), Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 40, Arbitration Act, 1889 (52 & 53 Vict c 47)

(*o*) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), s 9

(*p*) 16 & 17 Vict c 137, 18 & 19 Vict c 124, 21 & 24 Vict c 136, 25 & 26 Vict c 112; 32 & 33 Vict c 110 The court has also inherent jurisdiction to control charitable trusts, but this jurisdiction is only exercisable by information in the name of the Attorney-General

(*q*) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), s 10

(*r*) 31 & 32 Vict c 40

39 & 40 Vict c 17

40 & 11 Vict c 18

*a*) 44 & 15 Vict c 41 -

45 & 16 Vict c 55

*c*) 47 & 48 Vict c 18

*d*) 56 & 57 Vict c 53, s 46

*e*) 59 & 60 Vict c 30, s 2

*f*) See p 52, *ante*

(*g*) See *London Gazette*, 31st October, 1906, p 7248

SUB-SECT. 4.—*Procedure.*

**266** The Chancellor has a prescriptive power to regulate the procedure of his court, and further, with the concurrence of the Lord Chancellor, power to adapt and modify the Rules of the Supreme Court to the Palatine Court (*h*)

The Chancellor has jurisdiction to hear interlocutory matters out of the jurisdiction (*i*)

In case of any person who has entered an appearance, or come in, or otherwise submitted to the jurisdiction of the court, the Chancellor may, upon special application, make an order for service of process on him out of the jurisdiction (*h*). The service of subpoenas on witnesses out of the jurisdiction is valid (*l*)

**267** The Chancery of Durham Rules, 1889, were made by the Chancellor on the 1st February, 1889, and were amended by rules made the 6th July, 1889. These rules are now in force. An order as to court fees and another as to solicitors' costs were also made by the Chancellor on the 1st February, 1889 (*m*)

**268** There is an appeal from the Palatine Court to the Court of Appeal, and thence to the House of Lords (*n*)

SUB SECT 5 —*Officers*

**269** There is an Attorney-General, a Solicitor General, a conveyancing counsel, and a registrar of the court, who is appointed by the Chancellor and exercises the functions of a Master of the Supreme Court (Chancery Division (*o*) and Taxing Office) (*p*) and of a Chancery Registrar etc. He also has the custody of documents etc (*q*). There is an appeal from the Registrar to the Chancellor (*r*)

## Part XVI.—Courts of the Cinque Ports.

SECT 1 —*In General*

**270** Very little remains of the former jurisdiction of the Lord Warden of the Cinque Ports (*s*), whose civil juris-

(*h*) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), s 1

(*i*) *Ibid*, s 4

(*h*) *Ibid*, s 2

(*l*) *Ibid*, s 5

(*m*) These rules, which are adapted from the Rules of the Supreme Court, are printed and put on sale. They were made under the Chancellor's prescriptive power, and not under the powers conferred by s 1 of the Act of 1889

(*n*) Palatine Court of Durham Act, 1889 (52 & 53 Vict c 47), s 11. The change that this enactment made in the appeal was to substitute an appeal in the first instance to the Court of Appeal for an appeal direct to the House of Lords.

(*o*) The Chancery of Durham Rules, 1889, Ord 46.

(*p*) *Ibid*, Ord 50, r 11

(*q*) *Ibid*, Preliminary Order.

(*r*) *Ibid*, Ord 46, r 105

(*s*) The privileged ports were originally three in number. Dover, Sandwich, and Romney. Hastings and Hythe were added by William the Conqueror, and

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Chancery  
Court of the  
County  
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Durham.  
—  
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Appeal

Officers

The Warden  
of the Cinque  
Ports

**SECT 1.**  
**In General.**

diction (*l*) was abolished, except as to salvage, in 1855 (*a*). A commission for the punishment of offences may be issued (*b*), directed to the Lord Warden jointly with the admiral or admirals or his or their lieutenant, deputy or deputies (*c*). The Admiralty Court of the Cinque Ports (*d*) is also preserved (*e*).

**Justices of  
the Cinque  
Ports.**

**271** Justices are appointed in the five ports and two ancient towns and such of their members as are boroughs, as in the case of other boroughs. The Crown has power to appoint justices having jurisdiction throughout the whole of the liberties of the Cinque Ports other than in the towns of Rye and Winchelsea and their corporate members, except for licensing purposes therein or matters which go before the general sessions of the Cinque Ports, ancient towns, or corporate members (*f*).

**SECT 2 – Salvage Commissioners**

**Salvage Com-  
missioners**

**272** The Cinque Ports Salvage Commissioners consist of three or more persons from each of the Cinque Ports, two ancient towns, and their members appointed by the Lord Warden. They have jurisdiction to decide on all claims made by pilots, hoveliers, bountmen, and others for services rendered to ships, for carrying anchors or stores to ships, or preserving goods or merchandise wrecked, within the jurisdiction of the Cinque Ports (*g*). An appeal lies either to the Cinque Ports Admiralty Court or to the Admiralty Division of the High Court (*h*).

The Lord Warden, the Lieutenant of Dover Castle, the deputy wardens of the Cinque Ports, and the judge of the Cinque Ports Admiralty Court have the same jurisdiction (*i*).

Winchelsea and Rye were also added before the first year of King John (1199). The Lord Warden or Keeper of the Cinque Ports (*guardianus quinque portuum*) is also the Constable of Dover Castle. He is also admiral, and is exempt from the jurisdiction of the High Court in the exercise of its Admiralty jurisdiction (1 Co Inst 223). The boundaries of the jurisdiction of the Lord Warden are from the point called Red Cliff, westward of Seaford, in the county of Sussex, along the coast to Faversham, thence across the water to Shellness Point, in the Isle of Sheppey, thence to Shee Bacon, thence in a direct line to Brightlingsea, thence along the shore to St Osyth, in Essex, thence along the shore to Maze Tower, and thence back to Red Cliff by way of an imaginary line in the sea (Cinque Ports Act, 1821 (1 & 2 Geo 4, c 76), s 18).

(*l*) There was a court of chancery and a court of load manage for the regulation of pilots.

(*a*) Cinque Ports Act, 1855 (18 & 19 Vict c 48), ss 2, 10.

(*b*) Offences at Sea Act, 1531 (23 Hen 8, c 17).

(*c*) Cinque Ports Act, 1821 (1 & 2 Geo 4, c 76) s 16.

(*d*) See as to this court, title ADMIRALTY, Vol I, p 139.

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 258. See also Municipal Corporations Act, 1883 (46 & 47 Vict c 18), s 13, and Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 571.

(*f*) Cinque Ports Act, 1811 (51 Geo 3, c 36). For the territorial jurisdiction of the justices of the Cinque Ports, see the Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 243.

(*g*) Cinque Ports Act, 1821 (1 & 2 Geo 4, c 76), ss 1, 2, Merchant Shipping Act 1894 (57 & 58 Vict c 60), s 571.

(*h*) *Ibid.*, s 4. See *The Gloria de Maria* (1856), Sw 106, *The Elise* (1839), Sw 438.

(*i*) *Ibid.*, s. 16, and see title ADMIRALTY, Vol I, p 139.

SECT. 8.—*The Courts of Shepway, Brotherhood, and Guestling.*SECT. 8.  
The Courts  
of Shepway,  
Brother-  
hood, and  
Guestling.

273 The Court of Shepway (*h*) was the ancient court in which the pleas of the Cinque Ports were heard and determined before the Lord Warden. Its only remaining function is to be summoned on the occasion of the installation of a new Lord Warden, and to have the patent of appointment read to the members of the court, and to receive his undertaking to maintain the franchises, liberties, and usances of the Cinque Ports (*l*).

Court of  
Shepway.

274 The Courts of Brotherhood (*m*) and Guestling (*n*) are courts which take cognisance of matters affecting the Cinque Ports and ancient towns, and the Ports and ancient towns and their members respectively.

Courts of  
Brotherhood  
and  
Guestling

The Court of Brotherhood is first held, and then there is a general meeting of the Brotherhood and Guestling. In the Court of Brotherhood the mayor, two jurats, and two freemen from each port or town sit, with the addition in the Court of Guestling of a similar deputation from each corporate member. The presiding officer is entitled the Speaker, and the office goes by rotation through the five Ports and two ancient towns (*o*). These courts are now usually only held on the occasion of a coronation to select the barons of the Cinque Ports who are to attend and to claim all the privileges of the Cinque Ports before the Court of Claims (*p*).

## Part XVII.—Borough and Local Courts of Record.

SECT. 1.—*In General.*SUB SECT. 1.—*Jurisdiction.*

275 Besides the county courts (*q*), a large number of local courts of record have been established either by royal charter, or by local and personal Acts of Parliament or prescription. Forty-two of these courts were abolished in 1883 (*r*). The re-

Local courts

(*h*) Curia Quinque Portuum apud Shepway (4 Co Inst 224)

(*l*) Knockor, Grand Court of Shepway

(*m*) Brotherhood, in Queen Elizabeth's charter called "brotheryeeld general," is the joint association and brotherly community one with another of the Cinque Ports and two ancient towns (Jeake, Charters of the Cinque Ports, p 90)

(*n*) So called because the corporate members are guests that are invited to appear and sit with the Ports and towns to consult about the general state of their affairs (Jeake, Charters of the Cinque Ports, p 91)

(*o*) See Jeake, Charters of the Cinque Ports, pp 90 *et seq*

(*p*) See p 117, *ante*. The last occasion on which the courts were held was just before the coronation of His Majesty King Edward VII

(*q*) These courts were established by the County Courts Act, 1846 (9 & 10 Vict. c 95), to supersede the Courts of Request, and other courts for the recovery of small debts, created under a great number of local and personal statutes. The county courts are now regulated by the County Courts Act, 1888 (51 & 52 Vict c 43), and the County Courts Act, 1903 (3 Edw 7, c 42), and the rules made thereunder. See title COUNTY COURTS, Vol. VIII, p 405.

(*r*) Municipal Corporations Act, 1883 (46 & 47 Vict c 18).

**SECT 1**  
**In General**

maunder still exist, and although the greater part of them have been in abeyance for many years (*s*), the corporations to which they were granted can still be compelled by mandamus to hold them and to entertain pleas (*a*), mere non-user does not take away the jurisdiction (*b*)

**Extension of jurisdiction**

**276** In 1835 (*c*) there was conferred on such of these courts not regulated by any local Act of Parliament as had not previously possessed it, and in which a barrister of five years' standing acts as judge or assessor, jurisdiction to try actions of assumpsit, covenant, debt (whether by specialty or by simple contract), trespass, and trover, provided the sum or damages sought to be recovered does not exceed £20, and actions of ejectment wherein the rent of the premises possession whereof is sought to be recovered does not exceed £20, and upon which no fine is reserved or made payable

**Excluding the jurisdiction**

**277** If the town council of a city or borough, or a majority of the ratepayers in any parish within the limits of which a court of local jurisdiction, other than a county court, is established, or into the limits of which city, borough, or parish the jurisdiction of such court shall extend, present a petition to His Majesty in Council that the jurisdiction of the local court be excluded in any causes whereof the county court has cognisance, then after two months' notice of the petition by public advertisement in such city, borough, or parish, and in some newspaper therein circulated, if no caveat be entered or counter-petition presented, an Order in Council may be made declaring the exclusion of the jurisdiction of such local court throughout the whole or any part of the district assigned or which may hereafter be assigned to such county court

If a caveat is issued or a counter-petition presented, the matter is to be referred to the Judicial Committee of the Privy Council for report (*d*)

(*s*) There are reports in the Civil Judicial Statistics, 1868—1905, of twenty-four of these courts holding sittings

(*a*) *R v Hastings Corporation* (1822), 1 Dow & Ry (M C) 53 (in this case no court had been held for fifty-two years), *R v Wells Corporation* (1836), 4 Dowd 562 (in this case no court had been held for two hundred years, and it was alleged by the corporation that the form of procedure was unknown, but in each case a rule nisi was made absolute) In 1894 the Recorder of Worcester doubted whether he was the proper judge of the Worcester Court of Pleas, and refused to entertain a plea for breach of promise of marriage (96 L T Jo 267) A mandamus was applied for on the part of the plaintiff to compel the corporation of Worcester and their recorder to hold a court and entertain the plea A rule nisi was granted on 13th March, 1894, and was directed to be served on the Attorney-General (*Times Newspaper*, 14th March, 1894) On 7th May, 1894, the rule nisi was made absolute after counsel for the plaintiff and the corporation and for the Attorney-General had been heard No writ of mandamus was actually issued on the corporation, and the Recorder acted on the order

(*b*) *A-G of Isle of Man v Cowley* (1859), 12 Moo P C C 27, *R v Havering-atte-Bower* (1822), 5 B & Ald 691

(*c*) Municipal Corporations Act, 1835 (5 & 6 Will 4, c 76), s 118 This jurisdiction was continued by the Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 183, which Act repealed the former Act See also the Borough and Local Courts of Record Act 1872 (35 & 36 Vict c 86)

(*d*) County Courts Act, 1852 (15 & 16 Vict c 54), s 7, repealed and re enacted



**278** His Majesty has power, by Order in Council, to enlarge the district of any inferior court of record, or where any part of the district is comprised within the jurisdiction of any like court to contract the same, and to make any alteration or regulation for the holding or sitting of the court both as to time and place, notwithstanding any provision in any Act constituting the court. No such Order can take effect in respect of any court not having a judge who is either a barrister or special pleader, or a solicitor who has practised as a solicitor for ten years (e). This power has never been exercised

SECT. 1.  
In General.  
Alteration of district

There is also power by Order in Council to confer on these courts the same jurisdiction in equity and in Admiralty respectively as any county court now has, or may hereafter have (f), and power by Order in Council on the joint petition of the council of a borough and of the justices for the county in quarter sessions to extend the area of the jurisdiction of a borough civil court over any district adjacent to the borough within the jurisdiction of those quarter sessions (g). Neither of these powers has ever been exercised.

**279** Inferior courts of record which have jurisdiction in equity, or at law and in equity, and in Admiralty respectively, have also had conferred upon them jurisdiction to entertain defences or counter-claims involving matter beyond their jurisdiction so far as they relate to the demand of the plaintiff and to the defence thereto, but no relief exceeding that which the court has jurisdiction to administer can be given to the defendant upon any such counterclaim. In case of such a counterclaim power is given to the High Court on the application of either party to order the transfer of the whole proceeding from the inferior court to the High Court (h).

Defences and counter-claims

The jurisdiction of these inferior courts to entertain counter-claims has been further extended (i) so as to enable an inferior court to hear and determine a counterclaim— (1) when the cause of action is outside the local limits of its jurisdiction, but is within the limits of the jurisdiction of any other inferior court of record (k), or (2) when the counterclaim involves more than one

by County Courts Act, 1888 (51 & 52 Vict c 43), s 7. The Orders in Council made under this power are referred to under the several courts in respect of which they have been made. Apparently Orders in Council already made under this enactment are not affected by the recent increase in the limit of the jurisdiction of county courts to £100 (County Courts Act, 1903 (3 Edw 7, c 42), s 1).

(e) Small Debts Act, 1845 (8 & 9 Vict c 127), s 9. As to compensation of officers and notice of the Order, see the section.

(f) Judicature Act 1873 (36 & 37 Vict c 66), s 88. An inferior court has, as regards all causes of action within its jurisdiction for the time being, power to grant the same relief, redress, and remedy, and to give effect to every defence or counterclaim, in as full and ample a manner as might and ought to be done in the like case by the High Court (*ibid*, s 89). See also Yearly Supreme Court Practice, 1909, p 1314.

(g) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 185.

(h) Judicature Act, 1873 (36 & 37 Vict c 66), s 90. See also title LITIGANT, COURTS, Vol VIII, pp 432, 434, SET-OFF AND COUNTERCLAIM, and Yearly Supreme Court Practice 1909, p 1315.

(i) Judicature Act, 1884 (47 & 48 Vict c 61), s 18.

(k) This provision may be very far-reaching. Thus, if in an action in the Salford Hundred Court (which has jurisdiction up to £50) a counterclaim was raised

**SECT. 1.**  
**In General.**

cause of action, as to each of which a separate action might have been maintained being within the jurisdiction of the court, and the aggregate amount of the counterclaim exceeds the jurisdiction of the court, or (3) when the amount of the counterclaim exceeds the jurisdiction, provided the plaintiff does not object in writing within the prescribed time. In addition, in any case where the counterclaim involves matter beyond the jurisdiction of the court, the court may on such terms, if any, as it thinks just either adjourn the hearing or stay execution on the judgment to enable any party to apply to remove the proceedings into the High Court, or to enable the defendant to prosecute a cross action in any court of competent jurisdiction, and in default of any such application being made or action being brought the court shall after the expiration of the time limited have jurisdiction to hear and determine the whole matter in controversy to the same extent as if the parties had consented thereto.

Application of  
Judicature  
Act, 1873,  
s. 25.

**280** The rules of law contained in s. 25 of the Judicature Act, 1873 (*h*), as amended by s. 10 of the Judicature Act, 1875 (*m*), are applied to inferior courts (*n*) so far as the matters to which they refer are cognisable by such courts.

**SUB-SECT. 2—Procedure and Power to make Rules**

Procedure  
and rules

**281** The procedure in inferior courts of record is generally similar to that which existed in the superior courts of common law before the passing of the Common Law Procedure Act, 1852 (*o*), with the exception that all actions are to be commenced by writ of summons (*a*). In some cases, however, rules regulating practice and procedure have been made by the judges, and approved by the judges of the superior courts. In other cases Orders in Council have applied to particular courts the provisions contained in the schedule to the Borough and Local Courts of Record Act, 1872 (*b*), and the provisions of other Acts.

All the powers under which these Orders were made (*c*) continued in force until 1883, when they were repealed, except the power of the Act of 1872, with the condition that where any repealed enactment had been extended to a local court by Order in Council such

based on a cause of action arising wholly at Wallingford, the section would give the Salford Hundred Court jurisdiction, whatever the amount of the counterclaim.

(*h*) 36 & 37 Vict. c. 66.

(*m*) 38 & 39 Vict. c. 77.

(*n*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 91. See *King v Haukesworth* (1879), 4 Q. B. D. 371. See title COUNTY COURTS, Vol. VIII, p. 432.

(*o*) 15 & 16 Vict. c. 76.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 181.

(*b*) 35 & 36 Vict. c. 88. The schedule to the Act has been applied to the following courts:—Bristol Courts of Tolzey and Pie Poudre, Great Yarmouth Borough Court, Kingston upon-Hull Court of Record, London Mayor's Court, Norwich Guildhall Court, Poole Civil Court of Record, Scarborough Court of Pleas, York Court of Record. See under those courts, *post*.

(*c*) Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 228, Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 105, Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 9, Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 44.

enactment should be construed as if it were contained in a local and personal Act relating to such court (d). A power was substituted to apply by Order in Council to any local court the provisions of the Judicature Acts and the Rules of the Supreme Court. This last power has only been exercised in the case of the Court of the Vice-Chancellor of the University of Oxford, and in that case only as to appeals (e).

SECT. I.  
In General

The procedure varied in different courts, but it was generally based on either the old practice of the Court of King's Bench or on that of the Court of Common Pleas, that is to say, by attachment of the goods or person of the defendant to answer the claim of the plaintiff. But this procedure ceased in 1838, when arrest on mesne process was abolished (f). So that the procedure in those courts for which rules have not been made since that date would not appear to be very determinate. Probably, however, the next step after the service of the writ of summons, if the defendant does not enter an appearance, would be to proceed in the case of actions of debt or covenant by distress on the defendant's goods to compel an appearance (g), except in the case of those courts where judgment went in default of appearance. The object of compelling the defendant to appear is that in his absence the plaintiff's complaint cannot be heard (h). If appearance is entered, the ensuing steps would be declaration, plea, joinder of issue, and trial.

The judge of a borough civil court, if he is a barrister of five years' standing, has power to make rules of procedure to be approved by the recorder, if he is not judge of the court or does not act as the judge's deputy (i), and also by the Rule Committee of the Supreme Court (k).

There is also power by Order in Council to make rules (l) as to the appointment of deputy and assistant judges (m).

#### SUB-SECT. 3.—*Appeals.*

**282** An appeal lies from all inferior courts of record to a divisional court of the King's Bench Division on notice of motion (n).

(d) Statute Law Revision and Civil Procedure Act, 1853 (46 & 47 Vict. c. 49), ss. 3, 5—8.

(e) See p. 187, *post*.

(f) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 1. Mesne process was the writ of *capias* issued after the writ or other process commencing the action. It was so called because it came between the primary process and the final process to execute the judgment. See Tidd, *Practice*, 10th ed., p. 127, note (a).

(g) *William v. Bagot (Lord)* (1825), 3 B. & C. 772.

(h) *Ibid.* at p. 788.

(i) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 182 (1), (2).

(k) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 24. This approval had formerly to be given by three judges of the superior courts of common law (2 & 3 Vict. c. 27, s. 1), afterwards by three judges of the High Court (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 182).

(l) Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), s. 7.

(m) See p. 135, *post*.

(n) *Darlow v. Shuttlesworth*, [1902] 1 K. B. 721. Prior to this case it was

**SECT. 1.**  
**In General.**

All conditions precedent to the former right to bring error are still conditions precedent to the right to appeal, and the objection must have been distinctly taken and brought to the attention of the judge before verdict. The objection also must be on a point which could have been the subject of a bill of exceptions (*o*).

But it is unnecessary to draw up a bill of exceptions (*p*) before verdict, or to have the same sealed by the judge, or to comply with any other requirements in the nature of procedure on which the right to bring error depended.

**SUB SECT. 4 —Judges and Sittings.**

Judges of  
local courts.

**283** In very few of the charters granting these courts was there any provision made for the judge being a professional lawyer. But now where there is a recorder of the borough he is to act as judge, except where the court is regulated by a local Act of Parliament, or where at the time of the passing of the Municipal Corporations Act, 1835 (*q*), a barrister of five years' standing acted as judge or assessor of the court. In those cases where there was in 1835 a judge who was a barrister of five years' standing the appointment of the judge is by the corporation. In other cases the officer of the borough designated by the charter or by custom or the court is to be the judge, and power is given to the corporation to appoint such officer (*r*).

If an Order in Council (*s*) should be made enlarging the district of any inferior court of record the judge of which is not a barrister, or a special pleader, or a solicitor who has practised as such for ten years, the persons in whom the appointment is vested must within three months of the Order in Council, at a meeting called for the purpose, appoint a judge qualified as aforesaid, subject to His

doubtful how far and in what manner appeals to the High Court lay from those inferior courts of record to which the enactments as to appeals from county courts had not been applied by Order in Council under s. 15 of the Judicature Act, 1875 (38 & 39 Vict. c. 77), and where there were neither any statute nor any rules of the inferior court regulating such appeals. In 1838 a parliamentary paper (Parliamentary Paper, 1838 (C. 187), continued by Parliamentary Paper, 1838 (C. 187 I.)) reported that in some cases it was unknown whether there was an appeal, and that in others there was none.

(*o*) *Darlow v. Shuttleworth*, [1902] 1 K. B. 721, at p. 733. By the Inferior Courts Act, 1779 (19 Geo. 3, c. 70), s. 5, as amended by the Imprisonment for Debt Act, 1827 (7 & 8 Geo. 4, c. 71), s. 6, error or *supersedeas* in the case of a verdict under £20, in any inferior court of record, may only be brought if the defendant finds two sureties to assure the prosecution of the appeal, and the payment of the debt and costs of the appellant if unsuccessful.

(*p*) By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 69, Sched. XLIX, repealed by the Judicature Act 1875 (38 & 39 Vict. c. 77), s. 16, bills of exception and proceedings in error were abolished so far as regards the High Court.

(*q*) 5 & 6 Will. 4, c. 76.

(*r*) Municipal Corporations Act, 1835 (45 & 46 Vict. c. 50), ss. 175, 176. In 1894 the Recorder of Worcester had doubts as to the meaning of this enactment, and refused to hold the Court of Pleas of the borough. A mandamus, however, was applied for, and a rule absolute made commanding him to hold the court (see 96 L. T. Jo. 267).

(*s*) Under the Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 2.

Majesty's approval, and in default of such appointment His Majesty has power to appoint a duly qualified judge (a)

SECT. 1.  
In General.

Every judge or assessor of a borough civil court other than the mayor holds (b) his office during good behaviour.

**284.** The recorder has power given to him to appoint a barrister of five years' standing to act as deputy for him at the present or next court or courts Deputy judges

The Crown is empowered (c) by Order in Council to make rules as to the appointment of deputy judges and assistant judges. This power has been exercised by an Order in Council of 26th June, 1878 (d), which requires the appointment to be in writing, specifying the reasons for, the extent of, and the duration of the appointment, and that it shall be approved by the Lord Chancellor.

The authority having the appointment of a recorder has power to appoint a deputy if the recorder is unable to do so (e)

**285.** The Lord Chancellor is empowered to remove any judge of an inferior court of record for misbehaviour or incapacity (f). Removal of judges

**286.** The courts are directed to be held for the trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two consecutive courts Sittings of courts

Subject to this provision, in cases where the recorder is the judge, the court is to be held when the recorder thinks fit or the Secretary of State for the Home Department directs (g)

#### SUB SECT. 5—*Juries*

**287.** All burgesses are, unless exempt or disqualified, qualified and liable to serve on juries for the trial of issues in the borough civil court. The clerk of the peace and the registrar of the borough civil court are directed to summon a sufficient number of persons qualified and liable if there is any cause to be tried at the borough civil court. No person shall be summoned to serve as a juror more than once a year (either at quarter sessions or in the civil court) until every person qualified and liable has been summoned. Non-attendance or wilful withdrawal is punishable by fine at the discretion of the court (h) Juries

#### SUB SECT. 6—*Officers and Fees*

**288.** Corporations are under the obligation to appoint a registrar for the borough civil court, who is to be either the town clerk or a separate officer, and also other requisite officers (i) Officers and fees

(a) Under the Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 4

(b) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 177

(c) Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), s. 7

(d) Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 5

(e) Recorders, Specially Magistrates, and Clerks of the Peace Act 1906 (6 Edw. 7, c. 46)

(f) Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 10

(g) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 180

(h) *Ibid.*, s. 186. As to jurors in the Cinque Ports, see s. 218 (b), which, however, only mentions quarter sessions. See generally title Juries

(i) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 178 (1), (2)

SECT. 1.  
In General

The town council are empowered to fix fees subject to the approval of the Home Secretary. If fees are not so fixed, they are to be the same as those taken before 1835 (*k*).

SUB-SECT 7—*Removal of Causes*

*Certiorari.*

**289** The removal of causes from inferior courts of record into the High Court is effected by writ of *certiorari* issued to the inferior court of record (*l*), directing the record to be removed into the High Court (*m*). *Certiorari* always lies except where taken away by statute (*n*). It appears, therefore, that any action in an inferior court can be removed into the King's Bench Division at any stage before judgment (*o*). In addition to removal by *certiorari*, any proceedings in an inferior court in which the defence or a counter-claim involves matter beyond the jurisdiction of that court may be transferred to the High Court on an order of the High Court or a judge thereof, which may be made on the application of any party to the proceedings (*p*). Judgments of an inferior court may be removed into the High Court for the purpose of execution (*q*).

SECT 2—*Courts of Pie Poudre.*

Pie poudre  
courts

**290** Courts of pie poudre (*r*) are in many cases granted to boroughs in their charter. These courts, which are courts of record, had jurisdiction to decide as to all manner of contracts, trespasses, covenants, and debts done within the time of fairs or markets and within their precincts. The jurisdiction only extends

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 178 (3), (4)

(*l*) There were two modes by which causes in the inferior courts could be removed into the superior courts at Westminster. The first was by *certiorari*, and the second by a writ of *habeas corpus cum causa*, which lay when the defendant had been attached by his person or arrested on mesne process, and was directed to the officer in whose custody he was to bring him up and surrender him to the marshal of the King's Bench or the warden of the King's prison. It also lay to his bail for the same purpose. Since 1838, when mesne process in inferior courts was abolished by the Judgments Act, 1838 (1 & 2 Vict c 110), this mode of removal by *habeas corpus cum causa* is no longer in use (see Archbold, Practice, 8th ed., p 1152).

(*m*) Formerly into the Chancery or the King's Bench (Fitz. Nat. Brev. 245; see also Archbold, Practice, 8th ed., p 1156).

(*n*) *Goodright v Sadler v Dring* (1823), 2 Dow & Ry (K B) 407, *Patterson v Grailridge v Eades* (1824), 3 B & C 550. "A writ of *certiorari* is a matter of course", *Symonds v Dimadale* (1848), 2 Ex 533. As to *certiorari* generally, see title CROWN PRACTICE.

(*o*) *R v Seton (Inhabitants)* (1797), 7 Term Rep 373, *Kemp v. Balne* (1844), 1 Dow & L 885.

(*p*) Judicature Act, 1873 (36 & 37 Vict c 66), s 90. See title COUNTY COURTS, Vol VIII, p 434.

(*q*) Inferior Courts Act 1779 (19 Geo 3, c 70), s 4, Judgments Act, 1838 (1 & 2 Vict c 110), s 22, Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), Sched. 9, 12. And see titles EXECUTION, JUDGMENTS AND ORDERS.

(*r*) *Pie poudre* is usually derived from *pes pulvericatus* (dusty foot). Daines Barrington, however, suggests that the true derivation is *piet pulverans* (old French for "pedlar") (Observations on Statutes, 3rd ed., p 382. See also Gneist *History of the English Constitution*, Vol I, p 381, Carter, *History of English Legal Institutions*, 1st ed., p 256). As to these courts see stat. (1477-8) 17 Edw 4, c 2.

to questions arising at the particular fair or market in question, and not to those arising at any previous one. If it appears that the cause of action is not within the jurisdiction of the court of pie poudre, the plaintiff is remitted for his remedy to the ordinary courts. The law administered in the courts of pie poudre is the law merchant. The court of pie poudre is only authorised to sit on a day for which the fair or market is granted by the charter, and not on any other day on which the fair or market may actually be held (s). The procedure in courts of pie poudre is simple—pleas are begun without a writ, and an answer has to be made within a day, in many cases within an hour. Pleas may be adjourned from hour to hour and from day to day. Judgment may be deferred to the time of another fair or market (t). Courts of pie poudre are almost obsolete, except in the case of Bristol (u).

SECT. 2.  
Courts of  
Pie Poudre.

### SECT. 3.—*Court of the Clerk of the Markets*

291. There was formerly an officer of the King's household called the Clerk of the Markets of the King's Household, who had jurisdiction to inquire whether weights and measures were according to the King's standard or no (a). The charters of many boroughs contain a grant of a court of the Clerk of the Markets (b). By such a grant the jurisdiction of the Clerk of the Markets of the King's Household is ousted, and the corporation has jurisdiction to inquire of weights and measures (c) in its court of the clerk of the markets.

Clerk of the  
Markets.

The Clerk of the Markets is entitled to a fee for sealing weights and measures, but not merely for viewing them (d).

### SECT. 4.—*Courts of the Staple*

292. Some boroughs possessed a court of the staple (e), in which justice was administered according to the law merchant by the

Courts of the  
staple

(s) Y B 22 Edw 4, 33 (B)

(t) Selden Society, Vol XXIII, p 26 "Secundum naturam curie pedis pulveris atq; percusum fieri debet de hora in horam a die in diem et non ulterius" P. R. O. Coram Rege Roll, 802, m 87a. This was on account of the need of expedition "propter personas qui celerem habere debent justiciam, sicut sunt mercatores quibus exhibetur justicia pepondious" (Bract f 334)

(u) Selden Society, Vol XXIII, p 25

(a) He is to this day called *clericus mercatus hospitii regis*, for of ancient time there was a continual market kept at the court gate (4 Co Inst. 273)

(b) "Le clerke de market est auciet officer, et couiēt voire que tous, weights et mesures soient accordant al estanderd le roy, que demur in leschequer a Westminster, et il tient court, et fait proces al vicount, et bailies de villes de retourner panels auant lui a certaine jour, per que il inquirera de choses incidents a son office" (Crompton on Courts, p. 220) "This officer hath a court which he may still keep, and hold pleas thereon of that which belongs to his office. but it seems he can inflict no punishment, nor proceed further than to take the presentment of the offenders, and then impose fine or amercement upon them according to the statutes" (Sheppard, Office of the Clerk of the Market, pp 116, 119)

(c) 4 Co Inst 274

(d) As to corporations having a grant of this franchise, see *post*, under the names of the several corporations

(e) "The word staple, anciently written estaple, comineth of the French word *estaps* which signifieth a mart or market" (4 Co Inst. 238)

SECT. 4  
Courts of  
the Staple.

mayor and constables of each staple A statute of Edward III. (*f*) enacted that merchants coming to the staple should be ruled by the law merchant as to all things touching the staple, pleas of land, however, were to be tried by the common law A mayor of the staple and two constables were elected annually by the merchants aliens as well as denizens, and two aliens were chosen by the merchant strangers to try causes touching such merchants (*g*) When an inquest (jury) was had to try a cause it consisted wholly of aliens or denizens when both parties were aliens or denizens respectively, but half of aliens and half of denizens when one party was an alien and the other a denizen (*h*) The mayor and the constables were to be sworn in the Chancery to do lawfully that which pertain unto them (*i*) These courts are now practically obsolete.

SECT 5—Particular Courts (*j*)

(1) Abingdon

Abingdon

**293** The Abingdon Court of Record has jurisdiction in personal actions up to £10 (*k*) It is directed to be held weekly There is a recorder of Abingdon, who is consequently judge of the court (*l*)

The proceedings are as at common law under the old practice of the superior courts before 1852 The court has been in abeyance since 1836 No rules of court or tables of fees are in existence

There is also a court of pie poudre (*m*), which had long been out of use in 1835, and a court leet (*n*)

(11) Alston Moor

Alston Moor

**294** The Lords of the Admiralty are lords of the manor of Alston Moor, in the county of Cumberland, and have there a court

(*f*) Statute of the Staple (27 Edw 3 stat 2), repealed by Statute Law Revision Act, 1863 (26 & 27 Vict c 125) This repeal does not "affect any principle or rule of law or equity, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, franchise, liberty, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived by, in or from any enactment hereby repealed" The staple of wools, leather, woollens, and lead were directed to be held at Newcastle-upon-Tyne, York, Lincoln, Norwich, Westminster, Canterbury, Winchester, Exeter, and Bristol, and at Kaormerdyn in Wales (*ibid*, c 1), "and because that merchants may not often long tarry in one place for levying of their merchandises, we will and grant, that speedy right be done from day to day and from hour to hour" (*ibid*, c 19)

(*g*) Statute of the Staple (27 Edw 3, stat 2, cc 21, 24)

(*h*) *Ibid*, c 6

(*i*) *Ibid*, c 23

(*j*) Where a borough referred to in this section has a recorder it is so stated

(*k*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol 7 Eliz, Part II, (1565))

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss. 175, 176 See p 134, *ante*.

(*m*) See p. 137, *ante*

(*n*) This court is held under the authority of a charter of Philip and Mary (Pat Rol 3 & 4 Phil & Mar, Part VI (1557)) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 3—6 Information kindly given by the town clerk. See p 215, *post*



leet (o) and view of frankpledge with a court baron (p) and customary court (q). The jurisdiction extends to debts and amerciaments up to £2, and to the assessment of damages done by the working of mines and minerals within the said manor. The judge is a certified solicitor appointed by the Lords of the Admiralty, with a salary of £10 a year. There is also an officer of the court, with a salary of £5 a year (r). The latest plaints entertained in this court seem to have been in 1895 (s).

(iii.) *Andover.*

**295** The borough of Andover, or Andover, has a court of record (a) with jurisdiction over all classes of actions where the amount in dispute does not exceed £40. The court has apparently been in abeyance since 1812 (b). The borough has a recorder, who is consequently judge of the court (c). The corporation has also a court leet (d). Andover.

(iv.) *Arundel.*

**296** The incorporation of Arundel rests on a judgment of the Queen's Bench in the reign of Elizabeth (e) on an information of *quo warranto*, in which it was held that the inhabitants are entitled to hold a court every three weeks with a jurisdiction limited to 40s., and in that court to choose portreeves, constables, and sergeants-at-mace. Apparently there has been no action in this court since 1798 (f). Arundel.

(v.) *Banbury.*

**297** The Banbury Court of Record (g) has jurisdiction over all classes of actions where the amount in dispute does not exceed £40. The pleadings are as at common law under the old practice. The court was held before the mayor or his deputy, assisted by the town clerk as assessor and registrar. The court was for a long time in abeyance, but was revived shortly before 1835, and the practice and machinery revised by Serjeant Talfourd, the then deputy recorder. The borough has a recorder, who is consequently the judge of the court. Banbury.

A copy of regulations or "Ordynances for the Courte and the

(o) See p 215, *post*

(p) See p 216, *post*.

(q) See p 216, *post*

(r) Parliamentary Paper, 1887 [C 187], lxxxii 169

(s) Judicial Statistics for 1894, Parliamentary Paper, 1896 [C 8263], xciv 1.

(a) This court is held under the authority of a charter of Queen Elizabeth (Pat Rol 41 Eliz., Part XII, f. 23)

(b) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1081—1088

(c) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss. 175, 176

(d) See p 215, *post*

(e) 28 Eliz., 22nd June, 1586

(f) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, p 689

(g) This court is held under the authority of a charter of George I (Pat Rol. 4 Geo 1 (1718), Part VII., No 1), confirming charter 1 Mary, granted 26th January, 1554

SECT. 5.  
Particular  
Courts

Offys's of the Same," dated 4 & 5 Phil & Mar, is in existence, as is a printed set of rules and forms dated 1841

The borough has also a grant of courts of pie poudre (*h*) during the fairs and markets, but these courts have long been disused (*i*).

There is also a court leet (*k*)

(v1) *Barmote Courts of High Peak*

High Peak  
Barmote  
Courts.

**298.** The Great Barmote (*l*) Courts and the Small Barmote Courts of High Peak are ancient courts with jurisdiction relating to mining rights and civil pleas in the King's Field or King's Fee (*m*) and other parts of the hundred of High Peak, in the county of Derby, where His Majesty is entitled to mineral duties

These courts are now regulated by statute (*n*), and are courts of record (*o*) The judge is the steward, who is appointed by His Majesty under the seal of the Duchy of Lancaster, or his deputy The qualification for the office is either being a barrister of five years' standing, a special pleader of ten years' standing, or a solicitor of seven years' standing (*p*)

The officers of the courts are the head barmaster and deputy barmasters (*q*) Two Great Barmote Courts are directed to be held at Monash during the year, but at present only one is held, about Midsummer (*r*), and Small Barmote Courts at places fixed by the steward as they may be required (*s*) The business transacted in the Great Barmote Court is the swearing in of the grand jury, and bills of directions, cross bills etc relating to mining rights (*t*) The jurisdiction of the Small Barmote Courts includes actions of title, trespass, and debt (*u*) This jurisdiction is not exclusive (*v*).

Causes may be removed by *certiorari* on reasonable cause shown by affidavit, but not otherwise (*w*)

The steward and grand jury have power to make new rules and customs, with the approval of the Chancellor of the Duchy of Lancaster, for the better regulation of the working and carrying on

(*h*) See p 136 *ante*

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 9—15. Information kindly given by the town clerk

(*k*) See p 215, *post*

(*l*) Barmote, i.e. "baigh-mote" Bargh—"a mine whereout of metals are digged" (W Robertson (1693), *Phraseologia Generalis* 207) The privileges of the miners in High Peak were ascertained and confirmed at an inquisition held at Ashbourne 1287 A D

(*m*) The King's Field of High Peak includes the liberties of Castleton, Bradwell, Hucklow, Winster, Monash, Taddington, and Upper Haddon

(*n*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c 94) See also title MINES, MINERALS AND QUARRIES.

(*o*) *Ibid.*, s 15

(*p*) *Ibid.*, ss 3, 4, 5, 15

(*q*) *Ibid.*, ss 9—14.

(*r*) Information kindly given by the Barmaster of the High Peak

(*s*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c 94), s. 6.

(*t*) *Ibid.*, s. 7.

(*u*) *Ibid.*, ss. 7, 16.

(*v*) *Ibid.*, s. 55

(*w*) *Ibid.*, ss. 29, 52.

of the mines within the district, and for the guidance and protection of the mines, and for regulating the practice and proceedings of the Great and Small Barmote Courts and of views and other proceedings, and for the execution of any process of these courts (*x*). New and additional rules and customs were made in 1859 under this power (*y*).

The procedure as to grant of new trials, setting aside judgments, and stay of proceedings is similar to that of the High Court (*s*). The issue of subpoenas (which may be served in any part of England), execution, and other matters are regulated by statute (*s*).

SECT. 8.  
Particular  
Courts.

(vii) *Barmote Courts of Wirksworth and its Liberties.*

**299** These are similar courts to those of High Peak (*a*). They also are regulated by statute (*b*). The jurisdiction extends over the King's Field in the soke and wapentake of Wirksworth, and also over five other liberties (*c*). The Crown has power to appoint a steward for the Wirksworth Barmote Courts (*d*), and the persons entitled to the first estate of freehold in the mineral duties payable in the several liberties have power to appoint stewards for these liberties (*e*). The qualification of stewards (*f*), provisions as to *certiorari* (*g*), jurisdiction of courts (*h*), procedure etc., are similar to those in the case of the Barmote Courts of High Peak. The courts are courts of record (*i*). Rules and customs are scheduled to the Act regulating the court (*h*).

Wirksworth  
Barmote  
Courts.

(viii) *Barnstaple.*

**300** The corporation of Barnstaple have a court of record (*l*), which was directed to be held before the mayor, recorder, and aldermen, or any two of them, and has jurisdiction in personal actions to any amount. The practice is similar to that of the King's Bench before the Common Law Procedure Act, 1852 (*i*). It is said that the only table of costs in existence is nearly three hundred years old.

Barnstaple.

(*x*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94), s. 56.

(*y*) Statutory Rules and Orders Revised, Vol. VI, Inferior Courts, England, p. 63.

(*a*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94).

(*b*) See p. 140, *ante*.

(*c*) Derbyshire Mining Customs and Mineral Courts Act, 1852 (15 & 16 Vict. c. clxxii).

(*d*) (1) Ashford, Hartington, Peak Forest, and Tideswell, (2) Orich,

(3) Stoney Middleton and Eyam, (4) Youlgrave, and (5) Lutton.

(*e*) Derbyshire Mining Customs and Mineral Courts Act, 1852 (15 & 16 Vict. c. clxxii), s. 3.

(*f*) *Ibid.*, ss. 3, 4.

(*g*) *Ibid.*

(*h*) *Ibid.*, ss. 38, 60.

(*i*) *Ibid.*, s. 16.

(*j*) *Ibid.*, s. 24.

(*k*) *Ibid.*, Schedule.

(*l*) This court is held under the authority of a charter of 8 James I (1610) (Pat. Rol., 9 Jac. 1, Part II, No. 15).

(*m*) 15 & 16 Vict. c. 76.

**SHORT, &  
Particular  
Courts.**

No rules of the court are known to be in existence (*n*) The borough has a recorder, who is consequently judge of the court (*o*).

(ix) *Basingstoke*

**Basingstoke.**

**301** The Basingstoke Court of Record has jurisdiction in personal actions up to £10 (*p*) The court is directed to be held weekly before the mayor, chief steward, and aldermen It has been in abeyance for a very long period

There is also a court of ancient demesne for the levying of fines and recoveries of lands of ancient demesne within the manor of Basingstoke (*q*) and a court leet (*r*), having jurisdiction over nineteen tithings, which is held twice a year before the town clerk as steward of the leet (*s*)

The charters also grant to the corporation a court of pie poudre (*t*), which, however, has not been held for many years.

(x) *Bath*

**Bath.**

**302** The Bath Court of Record (*u*) has jurisdiction in personal actions to any amount within the city and its suburbs, liberties, and precincts, including Bathwick (*x*) The procedure is the same as that of the old superior courts before 1852 There is a recorder, who is consequently judge of the court The last trial held in this court was in 1821

There is a court leet (*y*) held before the town clerk as steward of the manor (*z*).

(xi) *Beaumaris*

**Beaumaris**

**303** The Beaumaris Court of Record (*a*) has jurisdiction over personal actions up to or exceeding 40s The court is directed to be held weekly every Thursday before the mayor or bailiffs. It has been in abeyance since 1779

(*n*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, p 427

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176

(*p*) This court is held under the authority of charters of James I and Charles I (Originalia Rol, 20 Jac 1, Part I, Rot 61, granted 1st July, 1622, and Pat. Rol, 17 Car 1, Part VI, No 11, granted 20th August, 1621) The charters only differ in the title of the corporation

(*q*) See title REAL PROPERTY AND CHATELS REAL, and Fines and Recoveries Act, 1833 (3 & 4 Will 4, c 74), s 5

(*r*) See p 215, *post*

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1101, 1102 The court leet dates back at least to 1390 (Baigent and Millard, History of Basingstoke, pp 173, 247) Information kindly given by the town clerk.

(*t*) See p 136, *ante*

(*u*) This court is held under the authority of a charter of George III. (Pat. Rol., 34 Geo 3 (1790), Part VI, No 13), granted 12th February, 1794

(*x*) Under a charter of 32 Eliz (Pat. Rol., f 7) the jurisdiction did not include Bathwick, but in 1769 the jurisdiction was extended over that statute (9 Geo 3, c. 95). This statute is confirmed by the charter of

(*y*) See p. 215, *post*.

(*z*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp. 1111—1117

(*a*) This court is held under the authority of a charter of Elizabeth (Pat. Rol., 4 Eliz., Part VII., p. 89)

A court leet (*b*), to be held twice a year, was granted by the charter, and there is a court of *pie poudre* (*c*).

SECT. 3.  
Particular  
Courts.

(xii) *Beccles*.

**304.** The corporation of Beccles have a court of record, entitled the Beccles Fen Court (*d*), which has jurisdiction in actions which concern the fen or the ordinances and statutes relating to it. The court is directed to be held weekly every Tuesday before the portreeve (now mayor), surveyors, and common clerk (*e*). The court has been in abeyance since 1741. The procedure is regulated by the laws and ordinances of the town (*f*).

Beccles Fen  
Court.

(xiii) *Bedford*.

**305** The Bedford Court of Pleas (*g*) has jurisdiction in real and personal actions to any amount, except where either the corporation or the Crown is a party. The court has been in abeyance since 1789. The procedure appears to be unknown. There is a recorder of the borough, who is consequently judge of the court (*h*). There is also a court leet (*i*).

Bedford  
Court of  
Pleas.

(xiv) *Berwick-upon-Tweed*.

**306** The Court of Pleas of Berwick-upon-Tweed (*k*) has jurisdiction over all actions, real, personal, and mixed, to any amount. The court is directed to be held every second week. The procedure is by attachment of goods or by serviceable process (*l*). There is a recorder of the borough, who is consequently judge of the court (*m*).

Berwick  
Court of  
Pleas.

The corporation also has a court leet (*n*), held twice a year (*o*).

(xv) *Beverley*.

**307** The Beverley Court of Record (*p*) has jurisdiction in actions personal and mixed to any amount. The court is directed to be

Beverley.

(*b*) See p 215, *post*

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2581—2587. See p 136, *ante*

(*d*) This court is held under the authority of a charter of James I

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2129—2138

(*f*) "A Collection of divers Public Lawes, Ordinances, and Constitutions etc.," confirmed 28th September, 1613

(*g*) This court is held under the authority of a charter of Charles II (Pat Rol 16 Car 2, Part I, No 3)

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2103—2116. There is a regular record of the proceedings of the court from 1626 to 1789. Information kindly given by the town clerk. See p 215, *post*

(*k*) This court is held under the authority of a charter of James I, 2 Jul 1, Part XVI. The court was originally granted by a charter of 30 Edw 1

(*l*) A table of costs is given in the Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part III, p 1446.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176

(*n*) See p 215, *post*

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1435—1445

(*p*) This court is stated to be held under the authority of a charter of James II., which is not on the Patent Roll. The charters of James II are in many

**SECT 5**  
**Particular**  
**Courts.**

held weekly before the mayor, recorder, and aldermen, or any three of them, of whom the mayor or recorder is to be one. The procedure is by way of serviceable process. A table of fees is in existence (*q*). The court fell into abeyance about 1846, after the establishment of the present system of county courts (*r*).

The corporation also has a court leet (*s*), granted by a charter of Elizabeth (*t*).

(xvi) *Bewdley*

**Bewdley.**

**308** The Bewdley Court of Record (*u*) has jurisdiction in actions, mixed and personal, up to £100. It is directed to be held fortnightly before the mayor or his deputy, but has been in abeyance since about 1817.

The corporation has also a court leet (*a*), held twice a year, which also has fallen into desuetude (*b*).

(xvii) *Bideford*

**Bideford**  
**Civil Court**

**309** The Civil Court or Court of Record of Bideford (*c*) has jurisdiction over real and personal actions to any amount. It is directed by the charter to be held every three weeks, or at such other times as shall seem expedient. There is a recorder of the borough, and consequently he is the judge of the court (*d*). The practice is that of the former Court of Common Pleas at Westminster before 1852. The court is still held four times a year, but no process has been issued for many years (*e*).

(xviii) *Birmingham*

**Birmingham**

**310** The Borough Court of Birmingham (*f*) had jurisdiction conferred on it in personal actions up to £20, and in actions of

cases of doubtful validity, but with respect to courts they are usually identical with the preceding charters, *i.e.*, in the case of Beverley, Pat. Rol., 4 Car. 1, Part III, No. 51, Pat. Rol. 15 Car. 2, Part XVI, No. 3. Each of these charters confirmed the charter of 15 Eliz., which granted the court to the corporation.

(*g*) Printed in Poulson, Beverlac, p. 419.

(*r*) Information kindly given by the town clerk.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1453—1460. See p. 215, *post*.

(*t*) See Beverley Town Documents. Selden Society, p. xxvii.

(*u*) This charter is held under the authority of a charter of James I (Pat. Rol., 3 Jac. 1, Part XIV). This patent was surrendered to James II and a new charter granted, which surrender and grant was held to be invalid, and the charter of James I. was confirmed by a charter of 7 Ann.

(*a*) See p. 215, *post*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1771—1773.

(*c*) This court is held under the authority of a charter of James I (Pat. Rol., 16 Jac. 1), granted 20th December, 1618.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 435—440. Information kindly given by the town clerk.

(*f*) This court was granted to the corporation by a charter of Queen Victoria (Pat. Rol., 2 Vict., Part XIV, No. 7), granted 31st October, 1838. N.B.—This is the latest instance of the grant of a local court of record by charter.

ejectionment between landlord and tenant where the rent does not exceed £20 and no fine is reserved. This jurisdiction is now excluded in all cases in which the county court has jurisdiction (g). There is a recorder of Birmingham, who is consequently judge of the court (h). The court has not been held for many years.

(xix) *Blandford Forum*

**311** The Blandford Forum Court of Record (i) has jurisdiction in personal actions up to £10. The court is directed to be held every three weeks before the mayor or his deputy or the town clerk (j). The court has been in abeyance since the end of the eighteenth century, and no records are known to be in existence.

Blandford  
Forum.

The corporation has also a court leet (k), under a grant of the manor by James I. of even date with the charter (l).

(xx) *Bodmin*

**312.** The Bodmin Court of Record (m) has jurisdiction in all personal actions not exceeding £100. It is directed to be held on Monday in each week before the mayor or common clerk or town clerk. It has also jurisdiction in actions as to land within the borough. There are no rules of court or tables of fees in existence. This court has not been held for over one hundred years.

Bodmin.

There is also a court of pie poudie (n), but it has been in abeyance from before 1835 (o).

(xxi) *Boston*

**313** The Boston Court of Pleas (p) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week before the mayor, four aldermen justices of the peace (two of the quorum), the recorder, and town clerk.

Boston Court  
of Pleas.

The process of the court is as in the old superior courts of common law before 1852. The court appears to have been in abeyance for many years.

(g) By Order in Council dated 29th December, 1853 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 6).

(h) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) ss. 175, 176. See p. 134, *ante*.

(i) This court is held under the authority of a charter of James I. (Pat. Rol., 3 Jac. 1, Part VII., f. 12), granted 15th November, 1605.

(j) Formerly before the bailiff, or the steward or recorder, or his deputy, the town clerk.

(k) See p. 215, *post*.

(l) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1133, 1134.

(m) This court is held under the authority of a charter of George III. (Pat. Rol., 38 Geo. 3, Part LX., No. 6).

(n) This court is granted by the charter of George III.; see p. 136, *ante*.

(o) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 443—445.

(p) This court is held under the authority of a charter of Henry VIII. (Pat. Rol., 37 Hen. 8, Part IV.).

**SECT. 5.  
Particular  
Courts**

The corporation has also a court of pie poudre (*q*) and a grant of a court of the Clerk of the Market (*r*).

The charter of Henry VIII grants a court leet (*s*) to the corporation, with jurisdiction over the manors of Roose Hall, Hussey Hall, and Hall Garth, within the borough (*t*).

(xxii) *Brecon*

**Brecon.**

**314.** The Brecon Court of Record (*u*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week before the mayor, aldermen, and town clerk, or any two of them

The process of the court is by summons and attachment of goods. If the defendant does not appear, judgment goes by default, if he appears, the steps in the action are declaration and bill of particulars, a plea is demanded at the next court and issue joined, and a jury is summoned for the court next following (*x*). The court has been in abeyance for many years.

The corporation also has a court leet (*a*).

(xxiii) *Bridgnorth.*

**Bridgnorth**

**315** The Bridgnorth Court of Record (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The borough has a recorder, who is consequently judge of the court (*c*). The practice is as in the old Court of King's Bench before 1852 (*d*).

(xxiv) *Bridgwater*

**Bridgwater  
Civil Court**

**316** The Bridgwater Civil Court or Court of Record (*e*) has jurisdiction in personal actions to any amount. The court is directed to be held every week. The borough has a recorder, who is consequently judge of the court. The practice of the court is similar to that of the old Court of Common Pleas before 1852 (*f*), and rules were made in 1827 and 1882 in conformity with those of the Court of Common Pleas (*g*).

(*q*) See p 136, *ante*

(*r*) See p 137, *ante*

(*s*) See p 215, *post*

(*t*) A charter of Queen Elizabeth (1572-3) granted a court of Admiralty to this corporation (see p 105, *ante*). Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp. 2151-2156

(*u*) This court is held under the authority of a charter of Philip and Mary (Pat. Rol., 2 & 3 Phil & Mar, Part III., granted 3rd May, 1556)

(*x*) Information as to the costs will be found in the Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part I, p. 180

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 177-181, see p 215, *post*

(*b*) This court is held under the authority of a charter of Henry VI. (1425).

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., p. 1781

(*e*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 35 Car. 2, Part VI., No. 6).

(*f*) Information as to the fees of the court is given in the Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part I, p. 464.

(*g*) *Ibid.*, Part I., pp. 463, 464



(xxv.) *Bridport*

SECT. 5.  
Particular  
Courts.  
Bridport.

**317.** The Bridport Court of Record (*h*) has jurisdiction in all personal actions up to £20. The court is directed to be held once in three weeks before the mayor (*i*).

The process is by serviceable process, and the subsequent proceedings are as those in the superior courts of common law before 1852

The court has been in abeyance since 1787 No rules or tables of fees are in existence.

The corporation has a court leet (*j*), held before the mayor, the town clerk acting as clerk of the court (*k*).

(xxvi.) *Bristol*

**318.** The Tolzey Court of Bristol (*l*) has jurisdiction in all mixed and personal actions to any amount The court also possesses the power of foreign attachment. At the time of the passing of the Municipal Corporations Act, 1835 (*m*), a barrister of five years' standing was judge of the court, and consequently the recorder is not necessarily the judge At the present time, however, the recorder of Bristol is the judge of the court (*n*)

The corporation has also a court of pie poudre (*o*), which is held during fourteen days annually The holding of the Court of Tolzey is suspended during the holding of the Court of Pie Poudre, which court is held as a continuation of the Court of Tolzey

In 1871 an Order in Council was made applying certain provisions of the Common Law Procedure Acts, 1852 (*p*), 1854 (*q*), and 1860 (*r*), and of the Summary Procedure on Bills of Exchange Act, 1855 (*s*), to the Bristol Courts of Tolzey and Pie Poudre (*t*) In 1873 another

Court of  
pie poudre.

Procedure.

(*h*) This court is held under the authority of a charter of Charles II (Pat. Bol., 18 Car. 2, Part V, No. 10), granted 15th August, 1663, confirming a charter of 17 Jac. 1 (granted 2nd November, 1619), and increasing the jurisdiction of the court from £10 to £20

(*i*) Formerly before the bailiffs (of whom there were two) and the deputy recorder, or any two of them

(*j*) See p. 213, *post*

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp. 1139—1143 Information kindly given by the town clerk

(*l*) This court, which is held under the authority of a charter of Queen Anne (Pat. Bol., 9 Ann., Part V, No. 11), granted 24th July, 1710, was originally that of the bailiffs of the hundred When Bristol became a royal residence this court became united with that of the Lord Steward of the Household Richard II. by a charter of the nineteenth year of his reign granted that the Steward, Marshal, and Clerk of the Market of the King's Household should not sit or exercise their office within the town As to securing attendance of defendant, see *Re Price, ex parte Sear* (1881), 17 Ch. D. 74, C. A.

(*m*) 5 & 6 Will. 4, c. 76

(*n*) It must be noted that the three Orders in Council mentioned later direct that the powers of the court or a judge are to be exercised by the recorder of Bristol or his duly appointed deputy Parliamentary Paper, 1888 (O. 187), LXXXII. 189, states that the recorder is *ex-officio* judge of the court.

(*o*) See p. 136, *ante*

*p*) 15 & 16 Vict. c. 76.

17 & 18 Vict. c. 125

23 & 24 Vict. c. 126.

18 & 19 Vict. c. 67

Order in Council of 16th May, 1871 (Statutory Rules and Orders Revised, VI., Inferior Court, England, p. 9).

**SECT. 5.  
Particular  
Courts**

Order in Council (a) was made extending the whole of the provisions of the schedule to the Borough and Local Courts of Record Act, 1872 (b), to these courts. In 1878, however, rules were made by the then judge and confirmed by three judges of the High Court (c). These rules extended, with certain exceptions, all the provisions of the Judicature Acts, 1873 (d) and 1875 (e), and all rules made or which thereafter should be made thereunder, to the Bristol Courts of Tolzey and Pie Poudre. The effect of this appears to be to leave in force only that part of the Order in Council of 1871 which applied to these courts certain sections of the Common Law Procedure Act, 1852, relating to actions of ejectment (f).

In 1883 another Order in Council was made (g) applying to these courts certain provisions of an Act of William IV (h) and of the Common Law Procedure Act, 1860 (i), relating to interpleader. The Rules of the Supreme Court, however, appear to supersede these provisions except the provision in the Act of 1860 as to the finality of judgments (k).

**Officers**

The officers of the court are the registrar and two sergeants-at-mace appointed by the corporation. This court is still held (l).

**Bristol  
Mayor's  
Court**

**319** A charter of Edward III (m) confirmed to the corporation of Bristol a Mayor's Court, which is presumed to be analogous to the London Mayor's Court (n). This court, after a contest for jurisdiction with the Tolzey Court, fell into disuse about the seventeenth century.

**Staple Court**

**320** There was also a court of the Staple (o), which, like the Mayor's Court, was superseded by the Tolzey Court (p).

**Frankpledge.**

A charter of Edward III recognised that the burgesses of Bristol from time immemorial had enjoyed the view of frankpledge, and confirmed the privilege (q).

(a) Order in Council of 26th June, 1873 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 11)

(b) 36 & 36 Vict c 86

(c) Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 14

(d) 36 & 37 Vict c 66

(e) 38 & 39 Vict c 77

(f) 15 & 16 Vict c 76. That is to say, ss 209—214, 218—220

(g) Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 13

(h) 1 & 2 Will 4, c 58

(i) 23 & 24 Vict c 126

(k) "The judgment in any such action or issue as may be decided by the court or judge in any interpleader proceedings and the decision of the court or judge in a summary manner shall be final and conclusive against the parties and all persons claiming by, from, or under them" (*ibid*, s 17)

(l) In 1905 there were 1,599 plaints issued, of which forty-nine came on for trial (Civil Judicial Statistics for 1905, Parliamentary Paper, 1907 [O 3477], p. 164)

(m) 47 Edw 3, granted 8th August, 1373

(n) See title MAYOR'S COURT, LONDON. By charters of Henry VI (1446) and Edward IV (1461) a Court of Admiralty (see p 105, *ante*) was granted to the corporation of Bristol, but in 1637 they resigned the exclusive power of Admiralty jurisdiction

(o) See p. 137, *ante*.

(p) See p 147, *ante*.

(q) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1151—1178. See p 215, *post*

(xxvii.) *Buckingham*SNOT, &  
Particular  
Courts.Buckingham  
Three Weeks  
Court.

**321** The Three Weeks Court of Buckingham (r) has jurisdiction over all causes of action not exceeding £5. The court is directed to be held from three weeks to three weeks before the mayor, three burgesses, and the steward or his sufficient deputy. The court has been in abeyance since 1818.

The corporation has also a court leet (s), held before the mayor (t).

(xxviii.) *Bury St Edmunds*Bury St  
Edmunds

**322** The Bury St Edmunds Court of Record (u) has jurisdiction over all actions, real, mixed, and personal, up to £200 (v). The court is directed to be held weekly, except in Christmas week. The borough has a recorder, who is consequently judge of the court (a).

The process of the court is by summons, attachment, and distress, or by any other proceeding which is consistent with the common, statute, or customary law of the country. The court has been in abeyance since 1853. Rules and forms dated 1st December, 1841, and a table of fees dated January, 1839, are in existence (b).

There was formerly a court called the Much Court, held before the steward of the liberty, with jurisdiction limited to 40s. This court was apparently a court baron, and not of record, and its civil jurisdiction is therefore abolished (c). The corporation has also a court of pie poudre (d), and a court leet (e).

Much Court.

(xxix.) *Cambridge University*

**323** The University of Cambridge has a Chancellor's Court (f), having jurisdiction over personal actions to any amount, as well as criminal jurisdiction over offences against the peace, mayhem and felony excepted, in which a master, scholar, sizar, or common servant of the university should be one party, but, after long disputes with the corporation of Cambridge, the jurisdiction was excluded in all actions and criminal matters in which a person

Chancellor's  
Court.

(r) This court is held under the authority of a charter of Queen Mary (Pat Rol, 1 Mary, Part III.)

(s) See p 215, *post*

(t) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 27—29

(u) This court is held under the authority of a charter of James I, granted 17th September, 1614. This charter is confirmed by Pat Rol, 20 Car 2, Part VIII, No 5

(v) Under the previous charter (Pat Rol, 6 Jac 1, Part XI, No. 14), granted 3rd April, 1606, the jurisdiction only extended to £50

(a) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176

(b) Information kindly given by the town clerk

(c) County Courts Act, 1867 (30 & 31 Vict c. 142), s 28. See p 215, *post*.

(d) See p 136, *ante*

(e) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2171—2177, see p 215, *post*

(f) This court was granted by a charter of Queen Elizabeth, dated 26th April, 1551, printed in Dyer's Privileges of the University of Cambridge, Vol I, pp. 113—131. This was in confirmation of a grant of 7 Ric. II, 10th December.

**SECT. 5.  
Particular  
Courts**

not a member of the university is a party (*g*) Since then the court has practically fallen into abeyance

The Chancellor, the Vice-Chancellor of the University, and the Commissary (*h*) are the judges of the court Causes are to be determined with as little delay as possible, and without the formalities of law

There are two courts, one for persons who are not *in statu pupillari*, the other for those who are *in statu pupillari* In the former case the Chancellor or Vice-Chancellor is the judge, in the latter the Chancellor, Vice-Chancellor, and the Commissary

There is an appeal from the Commissary to the Chancellor or Vice-Chancellor, and from the Chancellor or Vice-Chancellor to the Senate This latter appeal is heard by five judges elected singly by grace of the Senate (*i*)

(xxx) Cambridge

**Cambridge  
Court of  
Pleas.**

**324** The Cambridge Court of Pleas (*j*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The jurisdiction does not extend to members of the university The court is directed to be held once in four weeks The borough has a recorder, who is consequently judge of the court (*k*) The procedure is regulated by the Common Law Procedure Acts, 1852 (*l*) (with the exception of certain sections) and 1854 (*m*), and the rules made under them (*n*) The provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*o*), have also been extended to this court (*p*)

The officers of the court are the town clerk and sergeants-at-mace of the borough (*q*).

(xxxi) Canterbury

**Canterbury  
Mayor's  
Court.**

**325** The Mayor's Court of Canterbury (*r*) has jurisdiction in all actions, real, mixed, and personal, to any amount The

(*g*) Cambridge Award Act, 1856 (19 & 20 Vict c xvii), s 18

(*h*) The Commissary is an officer appointed by the Chancellor by letters patent

(*i*) Statutes of the University of Cambridge, Statute A, approved by the Queen in Council 27th February, 1882, chap viii Information kindly given by the registrar

(*j*) This court is held under the authority of a charter of Charles I (Pat Rol, 7 Car 1, Part XII, No 5)

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 132, *ante*.

(*l*) 15 & 16 Vict c 76

(*m*) 17 & 18 Vict c 125

(*n*) Orders in Council of 30th January, 1854, and 28th February, 1855 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp 17, 18)

(*o*) 18 & 19 Vict c. 67, by Order in Council of 19th October, 1855 (*ibid.*, p 19).

(*p*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp. 2185—2192.

(*q*) Parliamentary Paper, 1888 (C 187), lxxxii. 169

(*r*) This court is held under the authority of a charter of 26 Henry VI (Rot. Cart., 27-39 Hen. 6, No. 23), granted 22nd August, 1448, confirmed by Rot. Cart., 1 Edw. 4, Part I, No 8, granted 2nd August, 1461

SECT. II.  
Particular  
Courts.

recorder of Canterbury is judge of the court (*s*). In 1885 nothing was known of the practice of the court. The last action tried appears to have been one of ejectment in 1792.

Under a charter of Edward IV. the sheriff is to hold a county court monthly, but such courts are now practically obsolete.

Each of the wards of the city has a court leet (*t*), to be held once a year (*u*)

There was an ancient court of the staple at Canterbury (*v*).

(xxxii) *Cardiff*.

**326** The Cardiff Court of Record (*y*) has jurisdiction in all actions, real, mixed, and personal, to any amount (*z*) The court is directed to be held weekly The recorder of Cardiff is judge of the court (*a*) Cardiff.

The procedure is by writ of summons returnable at the next court after six days from service If the defendant does not appear and plead, judgment goes by default, if the defendant appears and pleads, the cause is then at issue, and trial is had at the next court (*b*).

The corporation have also (*c*) a court of pie poudre (*d*).

(xxxiii) *Carlisle*

**327** The Mayor and Bailiff's Court of Carlisle (*e*) has jurisdiction over personal actions to any amount There is a recorder of the city, who is judge of the court (*f*) The court should sit weekly. The procedure is by service of writ of summons followed by declaration and plea In actions under 40s the proceedings are summary without pleadings (*g*). The town clerk, as registrar, is the officer of the court (*h*). Carlisle.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176, see p 134, *ante*

(*b*) See p 215, *post*

(*u*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp 685—700

(*x*) Statute of the Staple (27 Edw. 3, stat 2, c 19), see p 137, *ante*

(*y*) This court is held under the authority of a charter of Queen Elizabeth, granted 12th June, 1600

(*z*) 6 Jac 1, Pat Rol, Part XXVIII, No 26, granted 18th July, 1608

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176, see p 134, *ante*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp 187—191

(*c*) Selden Society, Vol XXIII., p 15

(*d*) See p 136, *ante*

(*e*) This court is held under the authority of a charter of Charles I (Pat. Rol., 13 Car. 1, Part XXII, No 8), granted 21st July, 1637

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176, see p 134, *ante*

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1467—1475 As to costs, see *ibid.*, p. 1475

(*h*) A number of ancient rules of this court are printed in "The Municipal Records of Carlisle," published by the Cumberland and Westmoreland Antiquarian and Archaeological Society. Information kindly given by the town clerk.

SECT. 5.

**Particular  
Courts.****Carmarthen  
Fortnight  
Court.**(xxxiv) *Carmarthen*

**328** The Fortnight Court of Carmarthen (i) has jurisdiction in all actions, real, mixed, and personal, to any amount. As appears from the name, the court is to be held on every Monday from fifteen days to fifteen days. The recorder of Carmarthen is judge of the court (j).

The procedure in actions for the recovery of debts is by assumpsit, or *concessit solvere*, and is similar to that in the superior courts before 1852. The court has been in abeyance since 1846. No rules or tables of fees are known to be in existence.

The charter also granted a court of pie poudre (k) to be held before the recorder or town clerk at all fairs and markets, and a court of Admiralty.

There is a court leet (l) or view of frankpledge, directed to be held before the mayor, recorder, and peers (m).

There was also a Court of the Staple at Carmarthen (n).

(xxxv) *Chester.***Chester  
Courts of  
Portmote,  
and of  
Pentice and  
Passage**

**329** The Chester Court of Portmote (o) has jurisdiction in all actions, real, mixed, and personal, to any amount. There is a recorder of the city, who is consequently judge of this court and of the Courts of Pentice and Passage (p). The court is directed to be held once a fortnight.

Under the same charter the Chester Court of Pentice (q) has jurisdiction in personal actions to any amount. The court should be held three times a week before the recorder. The Passage Court (r) is a sort of branch of the Pentice Court, held at less frequent intervals, for the attendance of counsel. It has been in abeyance since 1743.

The procedure in these courts is that under the Common Law Procedure Acts, 1852 (s), 1854 (t), and 1860 (u), the provisions of

(i) This court is held under the authority of a charter of George III. (Pat. Rol., 4 Geo. 3, Part V, No. 15), granted 27th July, 1764.

(j) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176, see p. 134, *ante*.

(k) See p. 136, *ante*.

(l) See p. 215, *post*.

(m) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 203—211. As to costs, see *ibid.*, p. 211. Information kindly given by the town clerk.

(n) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.

(o) This court is held under the authority of a charter of Henry VII., granted 6th April, 1506. "Portmote" or "portmanmote" is the court of a borough, a borough mote, see New English Dictionary, *sub voce*.

(p) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176, see p. 134, *ante*.

(q) "Pentice" = "penthouse" = "appentitium" is a smaller building attached to a main one, an annexe, see New English Dictionary, *sub voce*. "The Pentice at Chester was an ancient building attached to St. Peter's Church, which was taken down about 1806" (Holland, Chester Glossary, *sub voce*).

(r) See, as to this name, p. 173, note (p), *post*.

(s) 15 & 16 Vict. c. 76.

(t) 17 & 18 Vict. c. 125.

(u) 23 & 24 Vict. c. 126.

which Acts were extended to them in 1870 (*a*). There are also rules made by the recorder, and approved by three judges of the superior courts on the 17th May, 1870, with tables of solicitors' costs and allowances to witnesses (*b*).

Sec. 6.  
Particular  
Courts.

A statutory provision (*c*) allows these courts to be held at the castle of Chester (*d*).

The registrar must be a fit person not a member of the council (*e*).

(xxxvi.) *Chichester*

**330** The Court of Record of Chichester (*f*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. The recorder of Chichester is judge of the court (*g*). The process is serviceable. If the defendant does not appear and plead, judgment goes by default. At the trial any person may appear as advocate.

Chichester.

There is also a bailiff's court of liberty, to be held every alternate week. Nothing is known as to the business of this court or the purpose for which it was intended.

Bailiff's  
court.

The charter of Henry VII granted to the corporation a court of pie poudre (*h*), and there is a court leet (*i*), held annually before the town clerk as steward (*k*).

There was a Court of the Staple at Chichester (*l*).

(xxxvii.) *Chipping Norton*

**331** The Chipping Norton Court of Record (*m*) has jurisdiction in personal actions up to £4. The court is directed to be held weekly before the bailiffs or the town clerk or his deputy. The pleadings are in writing. The court has been in abeyance since about 1780.

Chipping  
Norton.

The corporation has under the same charter a grant of a court of pie poudre (*n*), which has also long been in abeyance.

(*a*) By Order in Council dated 6th July, 1870 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p. 20).

(*b*) Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp. 21—43.

(*c*) Chester Courts Act, 1867 (30 & 31 Vict. c. 36). This provision has been repealed by the Statute Law Revision Act, 1878 (41 & 42 Vict. c. 79). See, however, the terms of that Act.

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1833, Part IV, pp. 2615—2625. Information kindly given by the town clerk.

(*e*) Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

(*f*) This court is held under the authority of a charter of Henry VII. This charter was surrendered in the first year of James II, and another granted on similar terms as to courts, but the validity of this surrender and regrant is doubtful.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*h*) See p. 136, *ante*.

(*i*) See p. 215, *post*.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp. 715—723.

(*l*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.

(*m*) This court is held under the authority of a charter of James I (Pat. Rol., 4 Jac. 1, Part V, f. 10).

(*n*) See p. 136, *ante*.

**SMOT. &  
Particular  
Courts.**

The charter gives power to hold a court leet (o) twice a year, which in 1835 was obsolete, having been superseded by the court leet of the manor (p)

(xxxviii) *Chipping Wycombe or High Wycombe*

**Chipping  
Wycombe.**

**332** The Chipping Wycombe Court of Record (q) has jurisdiction in personal actions up to £40 The recorder of the borough is judge of the court (r) The court has been in abeyance since the end of the seventeenth century

Under the same charter the corporation has a grant of a court leet (s) and view of frankpledge, to be held before the mayor, recorder, and such aldermen as have been mayors Incidental to this court is a Clerk of the Markets (t), who may hold a court for making presentments of false weights etc (a)

The charter also granted a court of pie poudre (b).

(xxxix) *Clitheroe*

**Clitheroe.**

**333.** Under a prescriptive right (c) the borough court of Clitheroe has jurisdiction in personal actions to any amount The court is directed to be held every three weeks before the mayor, with the town clerk as assessor There is no recorder of Clitheroe (d). The process is serviceable, or, in cases where the debt exceeds 40s, by attachment of goods on affidavit of the amount of the debt In the latter case a rule may be obtained for a *venditioni exponas*. If the defendant does not appear and put in bail, the goods are sold, and the plaintiff is paid the sworn amount of his debt (e). In 1887 it was stated that a barrister-at-law was judge of the court and a solicitor the registrar (f) The court has been in abeyance for about fifty years No rules or forms have been made subsequent to 1852 (g)

(o) See p 215, *post*

(p) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 33—35 A copy of the charge to the jury in the court leet and court baron will be found in Ballard's Notes on the History of Chipping Norton, p 36 Information kindly given by the town clerk

(q) This court is held under the authority of a charter of Charles II (Pat. Rol, 15 Car 2, Part IV, No 49)

(r) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p. 134, *ante*.

(s) See p 136, *post*

(t) See p. 137, *ante*

(a) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 41—43

(b) See p. 136, *ante*

(c) Henry de Lacy the second, by an undated charter (*temp* Edw 1), granted the burgesses of Clitheroe the liberties and customs which the burgesses of Chester had, and also the pleas of the courts A charter of 34 Hen 8 contains an *inquestum* and confirmation of this charter Attached to a translation of this charter the corporation has what is alleged to be a transcript of the privileges of Chester, including a court to be held before the mayor for pleas real and personal.

(d) There was a recorder of Clitheroe at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict c 50)

(e) As to costs, see Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, p 1486

(f) Parliamentary Paper, 1888 (C 187), lxxxvi. 169.

(g) Information kindly given by the town clerk.



The corporation has also a court of *pie poudre* (*h*), and there is a court leet (*i*), held before the town clerk as steward (*k*).

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Particular  
Courts.

(xl) *Colchester*

**334.** The Colchester Law Hundred and Foreign Courts (*l*) have jurisdiction in all actions, real, mixed, and personal, against free burgesses, and personal actions against foreigners to any amount. There is a recorder of Colchester, who is judge of these courts (*m*). The procedure is regulated by the Common Law Procedure Acts, 1852 (*n*) and 1854 (*o*), and the rules thereunder (*p*). The provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*q*), were also extended to these courts (*i*), which have, however, been in abeyance since 1878. The town clerk is registrar (*s*).

Colchester  
Hundred and  
Foreign  
Courts.

The charter of Henry V also granted a court of Admiralty (*a*) to the corporation, and there was a court of *pie poudre* (*b*).

(xh) *Congleton*.

**335.** The Congleton Court of Record (*c*) has jurisdiction in personal actions to any amount. The court was formerly held twice a year before the High Steward, who must be a person of "rare and special eminence," or the deputy steward of the borough. The pleadings are in writing. The catchpoll executes process, which issues upon a common affidavit of debt. The officers of the court are a catchpoll (*d*) and crier.

Congleton.

The corporation has also a court of *pie poudre* (*e*), and a court leet (*f*) to be held by the High Steward or his deputy (*g*).

(*h*) See p 136, *ante*

(*i*) See p 215, *post*

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1833, Part III, pp 1483—1487

(*l*) This court is held under the authority of a charter of George III. (Pat Rol, 3 Geo 3, Part VII), granted 9th September, 1763. This charter was a regrant consequent on default in the election of officers. The court was originally granted by Henry V (Morant, Essex, Vol I, pp 83—86)

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict c 56), ss 175, 176. See p 134, *ante*

(*n*) 15 & 16 Vict c 76

(*o*) 17 & 18 Vict c 125

(*p*) Orders in Council of 25th November, 1853, and 28th February, 1855 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp 43, 44)

(*q*) 18 & 19 Vict c 67

(*r*) Order in Council of 2nd December, 1857 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 44)

(*s*) Civil Judicial Statistics, 1879.

(*a*) See p 105, *ante*

(*b*) Morant, Essex, p 86. See p 136, *ante*

(*c*) This court is held under the authority of a charter of James I. (Pat Rol, 22 Jac. 1, Part II, No 1)

(*d*) A catchpoll (*caespollus*=chase-fowl) is equivalent to a sheriff's officer. See New English Dictionary, Vol. II, p. 187

(*e*) See p 136, *ante*.

(*f*) See p 215, *post*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2649—2653, Parliamentary Paper, 1835 (C 187), LXXXII. 169.

## SECT. 5.

Particular  
Courts

## Conway.

(xlii) *Conway.*

**336** The Court Baron of Conway (*h*) has jurisdiction in personal actions under £2 The court was held every three weeks before the bailiffs, it has been in abeyance for a long time (*i*)

There is also a court leet (*k*), formerly held before the recorder twice a year, together with a court baron (*l*).

(xliii) *Coventry*

## Coventry

**337** The Court of the Mayor and Bailiffs of Coventry (*m*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every fortnight before the mayor and bailiffs The jurisdiction of the court extends over the whole of the former county of the city of Coventry, including besides the city the parishes of Foleshill, Exhall, Anstey, Stoke, Stivichall, the greater part of Sowe, and a small part of Shilton

The practice of the court is that of the Court of King's Bench before 1852 The costs are regulated by an ancient table of fees The court has been in abeyance since 1824 A book of rules dated 1585-9 is in existence

The corporation as lords of the manor have a court leet (*n*) annually. The town clerk presides as deputy of the steward (*o*).

(xliv) *Dartmouth*

## Dartmouth

**338** The Court of Record of Dartmouth (*p*) has jurisdiction in all actions, real, mixed, and personal, up to any amount It has also jurisdiction upon the water extending about a mile from the castle and as far as the White Rock, a mile below Totnes The court is directed to be held weekly before the mayor and bailiffs There is no recorder of the borough (*q*)

There are no written rules of practice The process is by summons and attachment No trial has been held in this court since 1821 (*r*)

(*h*) This court is held under the authority of a charter of Edward VI This charter is an *inspeximus* and confirmation of a charter of 1 Hen 8, granted 7th March 1510

(*i*) Information, kindly given by the town clerk, states that the last record of business is in 1768 Mr Hogg's report (see note (*l*), *infra*), however, states that ten cases were entered in 1833

(*k*) See p 215, *post*

(*l*) Report upon certain Boroughs by T J Hogg, Parliamentary Paper, 1837 8 (686), p 13

(*m*) This court is held under the authority of a charter of James I (Pat. Rol., 19 Jac 1, Part VI, No 16), confirming a charter of 18 Edw 3 (cl 2), granted 20th January, 1345 The court, by the name of a portmote, was originally granted by Ranulph, Earl of Chester, in the reign of Henry II

(*n*) See p 215, *post*

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1795-1803 Information kindly given by the town clerk

(*p*) This court is held under the authority of a charter of James I (Pat. Rol., 2 Jac 1, Part XII), granted 3rd August, 1604 The court was first granted by a charter of 5 Edw 3 (14th April, 1331)

(*q*) There was a recorder of Dartmouth at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict c 50)

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp 477-479.

(xlv) *Daventry.*SMO. &  
Particular  
Courts.

**339** The Daventry Court of Record (a) has jurisdiction in personal actions above 40s and below £100 (b)

The corporation of Daventry, as successors of the prior and convent of Daventry, have a court leet (c) and view of frankpledge under a grant of Edward II (d).

Daventry.

(xlv) *Deal*

**340** The Deal Court of Record (e) has jurisdiction in mixed and personal actions up to £100 The court is directed to be held weekly There is a recorder of Deal, who is consequently judge of the court (f)

Deal.

Rules of practice and a table of fees were in the possession of the corporation in 1835 The process is by way of attachment of goods to compel appearance No trial has been had since 1808 in this court (g)

The corporation under their charter have also a court of pie poudre (h).

(xlv) *Denbigh*

**341** The Denbigh Court of Pleas (i) has jurisdiction in personal actions to any amount The court is directed to be held every fortnight before the bailiffs

Denbigh.

The procedure is by writ of summons and distress in default of appearance There are no written pleadings except in actions on the case (k) The costs are as those in the former sheriffs' county courts The court has long been in abeyance.

The corporation has also a court of pie poudre (l).

(xlv) *Derby*

**342** The Derby Court of Record (m) has jurisdiction in all actions, real, mixed, and personal, up to any amount The court is

Derby.

(a) This court is held under the authority of a charter of Queen Elizabeth (Pat Rol, 18 Eliz, Part VII, f 11)

(b) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1843—1846

(c) See p 215, *post*

(d) Merewether and Stephens, History of Boroughs, Vol II, p 597

(e) This court is held under the authority of a charter of William III. (Pat Rol, 11 Will 3, Part III, No 9), granted 13th October, 1699

(f) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*.

(g) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 931—935.

(h) See p 136, *ante*

(i) This court is held under the authority of a charter of Charles II (Pat Rol, 14 Car 2, Part VI, No 8), granted 14th May, 1662.

(k) See title ACTION, Vol I, p 39

(l) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2861—2865 See p 136, *ante*

(m) This court is held under the authority of a charter of 34 Charles II., granted 5th September, 1682.

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directed to be held every fortnight (*n*). The recorder of Derby is judge of the court (*o*), which is still held (*p*)

The Common Law Procedure Acts, 1852 (*q*) and 1854 (*r*), and the rules made under them, have been extended to this court (*s*), as has also been the Summary Procedure on Bills of Exchange Act, 1855 (*t*). Rules were made in 1861 by the then recorder, and confirmed by three judges of the superior courts (*u*), directing the court to be held for trials four times a year, and the registrar's office to be open on every weekday, and making various regulations as to pleadings etc., and fixing tables of solicitors' costs and court fees. Rules under the Debtors Act, 1869 (*b*), were also made 27th December, 1869 (*c*)

(*xlx*) *Devizes.*

**Devizes**

**343** The Devizes Court of Record (*d*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £40. The court is directed to be held weekly. There is a recorder of the borough, who is judge of the court (*e*)

The procedure and forms of pleading are as in the superior courts of common law before 1852. There are no rules of court in existence. The court has been in abeyance for a long period (*f*).

(*l*) *Doncaster.*

**Doncaster**

**344** The Doncaster Court of Pleas (*g*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. The recorder of Doncaster is judge of the court (*h*). There is no table of costs in existence, but costs

(*n*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1849—1851

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*p*) In 1905 there were 885 plaints issued only three, however, of which came on for trial (Civil Judicial Statistics for 1905, Parliamentary Paper, 1907 [C 3477], p 164). Nine hundred and eighty-six writs of summons were issued in 1907. Information kindly given by the town clerk

(*q*) 15 & 16 Vict c 76

(*r*) 17 & 18 Vict c 125

(*u*) By Order in Council of 23rd January, 1860 (Statutory Rules and Orders Revised, 1904 Vol VI, Inferior Court, England, p 45)

(*t*) 18 & 19 Vict c 67, by Order in Council of 23rd January, 1860 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 46)

(*a*) Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp 47—56

(*b*) 32 & 33 Vict c 62

(*c*) Information kindly given by the town clerk

(*d*) This court is held under the authority of a charter of Charles I (Pat. Rol., 16 Car 1, Part X, No. 2)

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 176, 177. See p 134, *ante*

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp 1261—1268

(*g*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car 2, Part IX, No. 4)

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

were formerly allowed on the scale charged by a London agent to his country client. The court has been in abeyance for many years.

The charter of Charles II also granted a court of pie poudre (i), and the corporation has a court leet (j).

(li) *Dorchester*

**345** The Dorchester Court of Record (k) has jurisdiction in all actions, real, mixed, and personal, under the amount of £40. The court is directed to be held every three weeks before the mayor, aldermen, and town clerk, or any two of them, of whom the mayor or town clerk must be one. There is no recorder of Dorchester. The procedure is as in the old superior courts of common law before 1852. No table of fees is in existence.

The corporation has also a court leet (l), hold annually before the mayor (m).

(lii) *Dover*

**346** The Court of Record of Dover (n) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held on the days and times accustomed. There is a recorder of Dover, who is consequently judge of the court (o).

In 1833 the practice of the court was not accurately known even by the officers of the court. The charter gives power to draw defendants to plead by summonses, attachments, or distresses (p). The court has been in abeyance since about 1801.

The corporation has also the right to hold a hundred court (q). This court appears to have once been of great importance, and to have had jurisdiction over all kinds of actions and offences. It had fallen into entire disuse long before 1835 (r).

The barons of the Cinque Ports (s) have a court leet (t) in Dover.

(i) See p 136, *ante*

(j) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp 1493—1502

(k) This court is held under the authority of a charter of Charles I (Pat Rol., 5 Car 1, Part X, No 1)

(l) See p 215, *post*

(m) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp 1273—1277

(n) This court is held under the authority of the charter of the Cinque Ports of Charles II, granted 23rd December, 1668, printed in Jeake, *Charters of the Cinque Ports*. This charter contains *inspecimus* and confirmation of previous charters of 1 Eliz. (granted 8th March, 1559) and 43 Eliz (granted 26th January, 1601). See Jeake, *Charters of the Cinque Ports*, pp 135—139.

(o) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss. 175, 176. See p. 134, *ante*

(p) Jeake, *Charters of the Cinque Ports*, p. 140.

(q) See p 214, *post*

(r) Appendix to Report of the Municipal Corporations Commissioners, 1835, pt II., pp 941—946. Information kindly given by the town clerk

(s) See p 127, *ante*.

(t) Jeake, *Charters of the Cinque Ports*, p. 67.

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## Droitwich.

(lii) *Droitwich.*

**347** The Droitwich Court of Record (*u*) has jurisdiction in personal actions up to £10 The court is directed to be held weekly before the recorder or bailiffs and the town clerk or his deputy. The court has been in abeyance since 1835. The procedure and pleadings were as in the superior courts of common law before 1852 No rules or tables of fees are to be found (*a*) The corporation has also a court of pie poudre (*b*) and a court leet (*c*)

(liv) *Evesham*

## Evesham.

**348** The Evesham Court of Record (*d*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £100 The court is directed to be held weekly before the mayor, senior alderman (and recorder) The process is by writ of summons, and the pleadings as at common law before 1852 A table of fees was in existence in 1835 The court has been in abeyance for many years

The charter also authorises the corporation to hold a court leet and a court of pie poudre (*e*)

(lv) *Exeter*

## Exeter.

**349** The corporation of Exeter has a Court of Record (*f*) with jurisdiction in all actions, real, mixed, and personal, to any amount This court is to be held weekly It seems that when sitting on the Monday it was called the Mayor's Court, or *curia civitatis*, and when sitting by adjournment on other days of the week it was called the Provost Court (*g*) The latter title is the only one in use at present There is a recorder of Exeter, who is consequently judge of the court (*h*), which is still held (*i*)

The procedure is regulated by the Common Law Procedure Acts,

(*u*) 22 Jac 1, Pat Rol, Part III, No 6

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 47, 48

(*b*) See p 136, *ante*

(*c*) Information kindly given by the town clerk See p 215, *post*.

(*d*) 3 Jac 1, Pat Rol, Part XV, No 31, granted 3rd April, 1605

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 53—55 See p 136, *ante*

(*f*) This court is held under a charter of Edward II, granted 12th November, 1320 This charter is confirmed by that of 3 Car 1, dated 17th December, 1627, which is the governing charter of the corporation and is printed at length in Oliver's History of Exeter, pp 289—304 Rolls of the *curia civitatis*, however, are in existence dating back to the reign of Edward I, which shows that the grant by Edward II. must have been a regrant of a franchise already possessed by the corporation

(*g*) Oliver, History of Exeter, p 307 The Municipal Corporations Commissioners, 1835, reported that the Provost's Court and the Mayor's Court were separate and distinct courts

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 487—499, Parliamentary Paper, 1887 (C 187), LXXXII 169 Ten plaints were issued in 1905, and one cause came on for trial (Civil Judicial Statistics for 1905, Parliamentary Paper, 1907 [C 3477], p 164)

1852 (*k*), 1854 (*l*), and 1860 (*m*), the Summary Procedure on Bills of Exchange Act, 1855 (*n*), and the schedule to the Borough and Local Courts of Record Act, 1872 (*o*), with certain variations (*p*).

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The officers of the court are the registrar, deputy registrar, and sergeants-at-mace

There was also an ancient Court of the Staple at Exeter (*q*).

(lvi) *Eye*

**350** The Eye Court of Record (*r*) has jurisdiction in mixed Eye. and personal actions to any amount The court is directed to be held weekly before the bailiffs or one of them. The court has been practically in abeyance since about 1755, but there were isolated proceedings up to 1839

There is also a court leet (*s*) held twice a year (*t*). A court of pie poudie (*u*) was granted to the corporation (*a*).

(lvii) *Falmouth*

**351** The Falmouth Court of Pleas of Record (*b*) has jurisdiction Falmouth. in personal actions up to £66 13s 4d (100 marks) It is directed to be held once every fortnight before the mayor (recorder) and aldermen, or any three of them, of whom the mayor or his deputy must be one There is no recorder of Falmouth

No rules of court are in existence The court has practically been in abeyance since 1783 In 1832 some summonses were issued, but no case came on for trial (*c*)

The jurisdiction of the court of the manor of Penryn Forryn extended over Falmouth (*d*)

(lviii) *Faversham*

**352** The Portmote Court of Faversham (*e*) had jurisdiction in Faversham all actions, real, mixed, and personal, to any amount, but the court Portmote Court.

(*k*) 15 & 16 Vict c 76

(*l*) 17 & 18 Vict c 125

(*m*) 23 & 24 Vict c 126

(*n*) 18 & 19 Vict c 67

(*o*) 35 & 36 Vict c 86

(*p*) Certain provisions of the Common Law Procedure Acts, 1852, 1854, and 1860, and of the Bills of Exchange Act, 1855, and the whole of the schedule to the Borough and Local Courts of Record Act, 1872, were extended to this court by Order in Council of 12th May, 1874 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 56)

(*q*) Statute of the Staple (27 Edw 3, stat. 2, c 19) See p 137, *ante*

(*r*) This court is held under the authority of a charter of William III (Pat. Rol, 9 Will 3, Part V, No 17)

(*s*) See p 215, *post*

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2229, 2230 Information kindly given by the town clerk

(*u*) See p 133, *ante*

(*a*) Selden Society, Vol XXIII, p xv Records of this court exist for the period 1732—1813 *Ibid*, p xix

(*b*) This court is held under the authority of a charter of Charles II (Pat. Rol, 13 Car 2, Part XX, No 8)

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 501, 502.

(*d*) See under "Penryn," p 189, *post*

(*e*) This court is held under the authority of a charter of Henry VIII. (Pat.

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has been in abeyance since about 1779 (*f*). There is now no recorder of Faversham (*g*).

There is also under the charter of Henry VIII a court of pie poudre (*h*), a court leet (*i*) and view of frankpledge, and a court of the Clerk of the Market (*k*), held annually before the mayor, to examine the weights and measures used within the town, of which latter court the town clerk is clerk (*l*)

(*lx.*) *Folkestone*

**Folkestone.**

**353** The Folkestone Court of Record (*m*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every fifteen days. There is a recorder of Folkestone, who is judge of the court (*n*). The court is still formally held, but there is no record of any business being done since 1833 (*o*). There is also a court leet (*p*).

(*lx*) *Gloucester*

**Gloucester  
Tolzey Court.**

**354** The Gloucester Court of Record, or Tolzey Court (*q*), has jurisdiction in all actions, real, mixed, and personal, to any amount. The recorder of Gloucester is judge of the court (*r*), which in 1833 was stated to have long fallen into entire disuse.

The corporation had a court of pie poudre (*a*), and a court leet (*b*), which dates back as far as Henry VII at least (*c*).

Rol., 37 Hen. 8, Part XVI.), granted 27th January, 1546, confirmed by charter of 1 Edw. 6, Pat. Rol., Part IV. The Cinque Ports charter of 20 Car. 2, granted 23rd December, 1668, also grants this court of record to the corporation of Faversham. See under "Dover," p. 159, *ante*.

(*f*) On the passing of an Act abolishing arrest on mesne process in inferior courts for sums under £10 (19 Geo. 3, c. 70).

(*g*) There was a recorder of Faversham at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*h*) See p. 136, *ante*.

(*i*) See p. 215, *post*.

(*k*) See p. 137, *ante*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 961—971.

(*m*) This court is held under the authority of a charter of Charles II., granted to the Cinque Ports 23rd December, 1668 (Jeake, Charters of the Cinque Ports, pp. 135—139).

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 981, 982. Information kindly given by the town clerk.

(*p*) See p. 215, *post*.

(*q*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 24 Car. 2, Part III., No. 13). This charter confirms a grant of this franchise by a charter 21 Ric. 2 (1398).

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*a*) See p. 136, *ante*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 59—62.

(*c*) Under a charter of 3 Car. I. (1627), confirmed by 24 Car. II. (note (*g*), *supra*) the sheriffs had cognizance of pleas in the Tolzey Court. "Rules and directions for the proceedings in the pleas of the Tolzey Court of the City of Gloucester" are set out at the end of a book of records of the court dated 1682. Fourteen



(LX.) *Godmanchester*

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—  
God-  
manchester.

**355.** The Godmanchester Court of Pleas (*d*) has jurisdiction in personal actions up to £2. The court is directed to be held before the bailiffs and assistants every three weeks. The procedure is as in the Court of King's Bench before 1852. The cost of a summons is sixpence. In 1835 a table of fees was in existence (*e*).

The corporation has also a court leet (*f*).

(LXI.) *Grantham.*

**356** The Grantham Court of Record (*g*) has jurisdiction in personal actions up to the amount of £40. The court is directed to be held weekly. There is a recorder of Grantham, who is consequently judge of the court (*h*). The process is almost exactly similar to that of the Court of Common Pleas before 1852.

The jurisdiction of the court extends over the soke of Grantham, including the parishes or townships of Barkston, Belton, Braseby, Colstresworth, Woolsthorpe, Denton, Stoke Rochford, Easton, Great Gonerby, Harbaxton, Londonthorpe, Great Ponton, and Sapperton.

The court has been in abeyance for many years (*i*).

(LXII.) *Gravesend*

**357** The Gravesend Court of Record (*k*) has jurisdiction in all actions, real, mixed, and personal, to any amount. It is directed to be held every three weeks. The recorder of Gravesend is judge of the court (*l*). A table of fees was in existence in 1834 (*m*).

(LXIV.) *Great Grimsby.*

**358** The prescriptive Great Grimsby Mayor's Court (*n*) has jurisdiction in all actions against freemen, real, mixed, and personal, to any amount. The Great Grimsby Foreign Court has similar jurisdiction in actions brought against residents who are not freemen. The courts are directed to be held weekly, and there is a

books of the records of the Tolzey and Pie Poudre Courts from 1616 to 1728 are in the possession of the corporation. Information kindly given by the town clerk.

(*d*) This court is held under the authority of a charter of James II (Pat. Rol., 2 Jac. 1, Part XVII.)

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2235—2237.

(*f*) See p. 215, *post*.

(*g*) 7 Car. 1, Pat. Rol., Part VI., No. 2.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2241—2244.

(*k*) This court is held under the authority of a charter of Charles I (Pat. Rol., 7 Car. 1, Part XXXII., No. 1).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2865—2867.

(*n*) This court is held under the authority of a charter of James II (Pat. Rol., 4 Jac. 2, Part IX., No. 4).

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recorder of Great Grimsby, who is judge of the courts (o) The pleadings are as in the superior courts of common law before 1852. The courts have been in abeyance for sixty years (p)  
The corporation has also a court leet (q), to be held before the mayor twice a year (r).

(lxv) *Great Yarmouth.*

**Great  
Yarmouth**

**359** The borough court of Great Yarmouth (s) has jurisdiction in all actions, real, personal, and mixed, to any amount The court is directed to be held weekly There is a recorder of Great Yarmouth, who is the judge of the court (t) The procedure in the court is that under the Common Law Procedure Acts, 1852 (a), 1854 (b), and 1860 (c), certain provisions of which Acts, and also the rules made under them, have been extended to this court (d), as have the whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (e), and the schedule to the Borough and Local Courts of Record Act, 1872 (f) The court is still held, but no process was issued in 1904 or 1905 (g) This court appears to have originally been a court of husting (h) on the model of that of London (i)

By the ancient custom of the borough a foreign court was to be held before the bailiffs for "speedy expedition and despatch of merchants and other strangers coming into the said burgh" The bailiffs were to have respect to the truth and equity of the case. No writ of error was allowed (k)

Under the charter of John the grant of thol—the right of keeping a market—involved the grant of a court of pie poudre (l)

(o) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(p) Information kindly given by the town clerk

(q) See p 215, *post*

(r) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2249—2253 For twenty years prior to this report the court had only been held once a year

(s) The court is held under the authority of a charter of Queen Anne (Pat Rol, 2 Ann, Part II 2, No 8) The court was originally granted by a charter of King John (1208 A D), which is confirmed by the charter of Anne (Manship, History of Great Yarmouth, Vol I, p 61, Vol II, pp 2, 41)

(t) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(a) 15 & 16 Vict c 76

(b) 17 & 18 Vict c 125.

(c) 23 & 24 Vict c 126

(d) By Orders in Council of 28th November, 1856 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p. 59), and 12th May, 1874 (*ibid.*, p 61)

(e) 18 & 19 Vict c 67, by Order in Council of 28th November, 1856 (*ibid.*, p 61)

(f) 35 & 36 Vict c 86, by Order in Council of 12th May, 1874, *ubi supra*

(g) Civil Judicial Statistics, 1868—1905

(h) See p. 176, *post*

(i) See note (d), p 176, *post*, and Manship, History of Great Yarmouth, Vol II, p. 12

(k) Manship, History of Great Yarmouth, Vol. II, p 49.

(l) See p 136, *ante*.

Under a charter of James I. (*m*) there is also a court leet (*n*) and view of frankpledge (*o*).

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Particular  
Courts.

(*lxvi*) *Guildford*

**360** The Guildford Court of Record (*p*) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held every three weeks There is a recorder of Guildford, who is judge of the court (*q*) Guildford.

The procedure is that of the old courts of common law. No issue has been tried in the court since the middle of the eighteenth century (*r*)

The mayor, as Clerk of the Markets, has authority to hold a court of Clerk of the Markets (*s*).

A charter of Edward III (*a*) also granted a court of pie poudre (*b*).

(*lxvii*) *Hartlepool*

**361** The corporation of Hartlepool (*c*) has a court of pie poudre (*d*), and also a court baron (*e*), with jurisdiction up to 40*s*, which was formerly held twice a year before the recorder There was also a court leet (*f*), held with the court baron Neither of these courts appears to have been held since 1843 (*g*). Hartlepool.

(*lxviii*) *Harwich*

**362** The Harwich Court of Pleas (*h*) has jurisdiction in personal and mixed actions up to £100 The court was directed to be held weekly before the mayor (recorder) and steward or deputy steward. There is no recorder of Harwich The procedure was as in the Harwich.

(*m*) 6 Jac 1, granted 22nd July, 1608, Manship, History of Great Yarmouth, Vol II, p 31

(*n*) See p 215, *post*

(*o*) Under a charter of Queen Elizabeth (Pat Rol, 1 Eliz, Part VI), granted 26th May, 1559, the corporation of Great Yarmouth were granted a Court of Admiralty See p 105, *ante*

(*p*) This court is held under the authority of a charter of Henry VII, granted 1st July, 1468 This charter is set out by way of *inspeximus* in a charter of Henry VIII (Pat Rol, 11 Hen 8, memb 3)

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2871—2873 Information kindly given by the town clerk

(*a*) See p 137, *ante*

(*b*) 14 Edw 3 (Rot Cart, Part I, No 1), 14th January, 1341

(*c*) Manning and Bray, History of Surrey, Vol I, p 35 See p 136, *ante*

(*d*) This court is held under the authority of a charter of Queen Elizabeth, granted 3rd February, 1593 (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, p 1531).

(*e*) See p. 136, *ante*.

(*f*) See p. 216, *post*.

(*g*) Surtees, Hist. of Durham, Vol III., pp 103, 108. Information

kindly given by the town clerk

(*h*) This court is held under the authority of charters of James I and Charles II (Pat Rol; 2 Jac 1, Part XXV, Pat. Rol, 17 Car 2, Part II., No 6) Under the charter of James I the limit of jurisdiction was £40.

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courts of common law before 1852. The court has been in abeyance since 1824 (*i*). No rules or tables of fees are in existence (*k*).

The corporation has also a grant of a court of Admiralty (*l*), which has not been held since 1791, and a court of pie poudre (*m*).

(*lxx*) *Hastings*

**Hastings.**

**363** The Hastings Court of Record (*n*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held at the accustomed times, that is, every fifteen days. There is a recorder of Hastings, who is judge of the court (*o*), which has been in abeyance since 1854 (*p*).

The corporation has also authority to hold a hundred court (*q*). At this court freemen were summoned and municipal officers chosen. The hundred court also exercised the functions of a general court leet (*r*), and had fallen into abeyance before 1835 (*s*).

(*lxx*) *Haverfordwest*

**Intrinsical  
Court of  
Haverford-  
west.**

**364** The Intrinsical Court of Haverfordwest (*t*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held "as well from month to month as from fifteen days to fifteen days" before the mayor or his deputy. The procedure is that of the old Court of Common Pleas.

The corporation has also a court of pie poudre (*a*) and had a court of Admiralty (*b*), both to be held before the mayor (*c*).

There was also a hundred court (*d*), held twice a year before the sheriff, for the election of officers and the transaction of the other business of a court leet (*e*).

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2261—2266

(*k*) Information kindly given by the town clerk

(*l*) See p 105, *ante*

(*m*) See p 136, *ante*

(*n*) This court is held under the authority of the charter of the Cinque Ports, granted by Charles II 23rd December, 1668, printed in Jeake, *Charters of the Cinque Ports*. See pp 135—139. This charter contains *insperimus* and confirmation of 1 Eliz. (granted 8th March, 1559) and 43 Eliz. (granted 26th January, 1601)

(*o*) Municipal Corporations Act, 1832 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*p*) Information kindly given by the town clerk. In 1800 this court fell into abeyance, but was revived by mandamus in 1822

(*q*) See p 214, *post*

(*r*) See p 215, *post*

(*s*) Appendix to Report of Municipal Corporations Commissioners, 1835, Part II, pp 997—1000

(*t*) This court is held under the authority of a charter of James I (Pat. Rol, 7 Jac 1, Part XXIII, No 3), granted 20th February, 1620

(*a*) See p 136, *ante*

(*b*) See p. 105, *ante*

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 233—239

(*d*) See p. 214, *post*

(*e*) Appendix, Part I, p 239.

(LXXI) *Hedon.*

SECT. 5.  
Particular  
Courts.  
—  
Hedon.

**365** The Hedon Court of Pleas (*f*) has jurisdiction in personal actions to any amount. The court was directed to be held before the mayor and bailiffs. The procedure was analogous to that of the superior courts of common law before 1852. The court had fallen into abeyance before 1884 (*g*)

(LXXII) *Helston*

**366.** The Helston Court of Record (*h*) has jurisdiction in personal actions to any amount. The court is directed to be held every three weeks before the mayor or his deputy, two of the aldermen (and the recorder or his deputy). There is no recorder of Helston (*i*)

The process is by attachment and distress. No rules of the court are in existence, nor any records of the holding of the court.

The mayor, as Clerk of the Market (*k*), holds a court of the Clerk of the Market once a year to inquire into the weights and measures in use in the borough (*l*). The Court of the Hundred (*m*) of Kerrier, held at Penryn (*n*), has jurisdiction within the borough of Helston.

(LXXIII) *Hereford*

**367** The Mayor's Court of Hereford (*o*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week. There is a recorder of Hereford, who is consequently judge of the court (*p*)

The practice of the court is that of the superior courts of common law before 1852. No table of costs is in existence. Solicitors have audience in the court.

The court has been in abeyance since about 1846.

The charters also grant a court leet (*q*) and view of frankpledge and a court of pie poudre (*r*)

(*f*) This court is held under the authority of a charter of Queen Elizabeth, granted 1564-5.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1537—1540.

(*h*) This court is held under the authority of a charter of George III (Pat. Rol., 14 Geo 3, Part VI, No 7), granted 3rd September, 1774.

(*i*) There was a recorder of Helston at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict c 50).

(*k*) See p 137, *ante*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 511—513.

(*m*) See p 214, *post*.

(*n*) See p 189, *post*.

(*o*) This court is held under the authority of charters of Queen Elizabeth and of James I (Pat. Rol., 39 Eliz, Part IX, fo 23, 17 Jac 1).

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 184, *ante*.

(*q*) See p. 215, *post*.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 253—259. See p 136, *ante*.

## SECT. 5.

Particular  
Courts.

## Hertford.

## (LXXIV) Hertford.

**368** The Court of Record of Hertford (s) has jurisdiction in personal actions up to £60 The court is directed to be held weekly before the mayor (or the recorder) or their respective deputies. There is no recorder of Hertford The court fell into abeyance in 1782, was revived in 1827, and again fell into abeyance

The mayor is entitled to hold a court of the Clerk of the Market (t) once a year (a).

## (LXXV) Huntingdon.

## Huntingdon

**369** The Huntingdon Court of Pleas (b) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held every three weeks before the mayor The procedure is similar to that of the superior courts of common law before 1852 There is no table of fees in existence, but there is a custom to take half the fees allowed in the old Court of King's Bench

The charter also grants a court leet (c) to the corporation (d).

## (LXXVI) Hythe

## Hythe.

**370** The Hythe Court of Record (e) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held at the accustomed times There is a recorder of Hythe, who is consequently judge of the court (f) The procedure is similar to that in the superior courts of common law before 1852 The court has been in abeyance since 1777, but is still formally held with the borough quarter sessions (g) The Bailiffs of the Cinque Ports have a court leet, as in the case of Dover The charter of Elizabeth also grants a court leet (h) and view of frankpledge to the corporation, and there is a court of pie poudre (i)

(s) This court is held under the authority of a charter of Charles II (Pat Rol, 32 Car 2, Part III, No 22)

(t) See p 137, *ante*

(a) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2885—2886

(b) This court is held under the authority of a charter of Charles I (Pat. Rol, 6 Car 1, Part I., No 2)

(c) See p 215, *post*

(d) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2287, 2288

(e) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol, 17 Eliz, Part VIII, fo 16) The franchise seems to have been conferred originally by the Custumal of Hythe, *temp circa* Ric III., and also under the authority of the charter granted by Charles II to the Cinque Ports, 23rd December, 1668, printed in Jenke, Charters of the Cinque Ports This charter contains *inspecimus* and confirmation of charters of 1 Eliz (granted 8th March, 1559) and 43 Eliz (granted 26th January, 1601) See Jenke, pp 135—139.

(f) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176 See p 134, *ante*.

(g) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1007, 1008 Information kindly given by the town clerk.

(h) See p. 215, *post*

(i) Selden Society, Vol. XXIII, p xv.

(LXXVII.) *Ipswich*

SECT. 5.  
Particular  
Courts.  
*Ipswich.*

**371.** The Ipswich Court of Small Pleas (*k*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every fortnight. The recorder of Ipswich is judge of the court (*l*). The jurisdiction of this court has been excluded in all cases in which the county court has jurisdiction (*m*).

The procedure is under the Common Law Procedure Acts, 1852 and 1854, the whole of which Acts, and the rules under them, have been applied to this court (*n*).

No proceedings appear to have been had in this court since 1878 (*o*), but the court is held if there is any business to be done (*p*).

There are also (1) a court called the Petty Court of the Bailiffs for passing the real estate of a minor situated within the borough, (2) a court of Portman's Mote for fines and recoveries and acknowledgments of married women, and (3) a court leet (*q*), but since 1793 (*r*) this court has fallen into abeyance (*s*).

Bailiffs'  
Court  
Portman's  
Mote

(LXXVIII.) *Kingston-upon-Hull*

**372.** The civil court of Kingston-upon-Hull, called the Court of Venire (*a*), has jurisdiction in all actions, real, mixed, and personal, to any amount. The court days are directed to be every fortnight, except for six weeks preceding the quarterly sittings of the court for the trial of actions, when they are to be weekly. The recorder is judge of the court (*b*).

Kingston-  
upon-Hull.

The procedure of the court is regulated by the Common Law Procedure Acts, 1852 (*c*), 1854 (*d*), and 1860 (*e*), certain provisions of these Acts having been applied to this court, as have the whole

(*l*) This court is held under the authority of charters of Edward IV and Charles II (Rot Cart, 3 Edw 4, 23 & 24 Edw 4, No 4, Pat Rol, 17 Car 2, Part VI, No 2). The court was originally granted by a charter of 1 John, printed in Rot Cart, Vol I, p 65 b.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.

(*m*) By Order in Council of 5th June, 1858 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 76).

(*n*) By Order in Council of 5th June, 1858 (*ibid*, p 75).

(*o*) Parliamentary Paper, 1888, (C 187) LXXII, 169.

(*p*) Information kindly given by the town clerk.

(*q*) See p 215, *post*.

(*r*) On the passing of a Paving Act (33 Geo 3, c xcii) which gave powers to commissioners to deal with nuisances.

(*s*) Appendix to Report of the Municipal Corporation's Commissioners, 1835, Part IV, pp 2293—2317. Under charters of Henry VIII the corporation of Ipswich has a grant of a Court of Admiralty (Pat Rol, 10 Hen 8 and 13 Hen 8). The boundaries of the jurisdiction of this court are from the Plattis and (north-east of Landguard Fort) south-eastward to the west side of the Cork sand, thence in a straight line to the Naze, along the coast by the town of Harwich, and up the river to Ipswich, and no farther. See p 105, *ante*.

(*a*) This court is held under the authority of 18 Hen 6, charters of Rot Cart, No 29, Henry VII and Charles II, Pat Rol, 13 Car 2, Part XXIII, No 22.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p 134, *ante*.

(*c*) 15 & 16 Vict. c. 76.

(*d*) 17 & 18 Vict c 125.

(*e*) 23 & 24 Vict. c. 126.

SECT. 5.  
Particular  
Courts

of the provisions in the schedule to the Borough and Local Courts of Record Act, 1872 (*f*), and the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*g*) Rules were also made between 1852 and 1857 by the then recorder, and confirmed by three judges of the superior courts of common law, as to pleadings etc. (*h*). The court is still held (*i*).

There is also a court of pie poudre (*h*) By a charter of Henry VI (*l*) the mayor and aldermen are entitled to choose from among themselves an admiral of the Humber (*m*).

(LXXIX) *Kingston-on-Thames.*

Kingston on-  
Thames.

**373** The Court of Record of Kingston-on-Thames (*n*) has jurisdiction in all personal and mixed actions to any amount. The court is directed to be held weekly before the bailiffs and the recorder and the steward of the court, or two of them There is a recorder of Kingston, who is consequently judge of the court (*o*) The office of the steward of the court was held *ex officio* by the Attorney-General, but there is no record of his ever having attended The jurisdiction of the court extends over Kingston, Elmbridge, Copthorne, and Effingham hundreds The process is by summons The costs are stated to be moderate, the average expense of a trial and final process not exceeding £10 The court has been in abeyance since the introduction of county courts in 1846

The corporation has a court leet (*p*) and view of frankpledge, with jurisdiction formerly extending over the whole hundred of Kingston, but in 1629 (*q*) the corporation released to the Crown that part of the jurisdiction which was within the manor of Richmond and the hamlets of Richmond and Kew and Petersham, and the manor of Ham, appurtenant to the manor of Richmond (*r*).

(*f*) 35 & 36 Vict c 86, by Order in Council of 26th June, 1873 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 78)

(*g*) 18 & 19 Vict c 57, by Order in Council of 21st November, 1855 (*ibid*, p 77)

(*h*) 10th November, 1852, 7th November, 1853, 23rd January, 1857 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp 80—85) R 23 of these rules runs as follows "That in all other respects the practice and pleading of this court shall be conformable to and as much as may be regulated by the town practice and pleading in the superior courts of common law at Westminster, whether such practice or pleading be regulated from time to time by Act of Parliament, rules of court, or otherwise"

(*i*) Eighty-three plaints were issued in 1905 (Parliamentary Paper, 1907 [C. 3477], p 164)

(*k*) See p 136, *ante*

(*l*) 26 Hen 6

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1545—1556, and information kindly given by the town clerk

(*n*) The court is held under the authority of a charter of James I (Pat Rol, 1 Jac. 1, Part VI), granted 17th November, 1603

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss 175, 176 See p 134, *ante*

(*p*) See p 216, *post*

(*q*) In consideration of a charter extending the jurisdiction of the Court of Record over the hundreds of Copthorne and Effingham 4 Car 1, 13th December, 1629.

(*r*) The corporation has also a court baron. See p 216, *post*.



The Hundred Court of Kingston is a court of ancient demesne(s). The latest entries in its records are a recovery suffered 1 Jac. I. and a fine levied 6 Jac. I.

There is also a court of *pie poudre* (t)

(lxxx) *Kirkby-in-Kendal.*

**374** The civil court of Kirkby-in-Kendal (a) has jurisdiction in personal actions from 40s to £40 The court is directed to be held every three weeks before the mayor and the two senior aldermen. The court has been in abeyance since about 1835 (b).

Kirkby-in-Kendal.

(lxxx1) *Lancaster*

**375.** The Court of Pleas of the Borough of Lancaster (c) has jurisdiction in personal actions to any amount. The court is directed to be held every week before the mayor The process is either by service, caption of the person (bailable), or attachment of the goods The town clerk is appointed registrar of the court No rules or tables of fees are in existence The court has been in abeyance for many years (e) There is also a court of *pie poudre*, held before the mayor (f)

Lancaster.

(lxxxii.) *Launceston*

**376** The Launceston Court of Record (g) has jurisdiction in personal actions to any amount The court is directed to be held every week before the mayor and aldermen. The court has fallen into abeyance since 1835 (h)

Launceston.

(lxxxiii.) *Leicester.*

**377** The Leicester Court of Record (i) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly or oftener if necessary. There is a recorder of Leicester, who is consequently judge of the

Leicester.

(s) See p 217, *post*

(t) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2892—2900 See p 136, *ante*

(a) This court is held under the authority of a charter of 86 Charles II

(b) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1589—1592 Information kindly given by the town clerk

(c) This court is held under the authority of a charter of George III (Pat. Rol. 59 Geo 3, Part XII, No 2) Information kindly given by the town clerk

(e) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1597—1607, information as to costs will be found at p 1607

(f) See p 136, *ante*

(g) This court is held under the authority of a charter of Philip and Mary (Pat. Rol. 2 & 3 Phil & Mar, Part VII), granted 15th February, 1556

(h) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 517, 519 Information as to costs will be found on p 519. Information kindly given by the town clerk

(i) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol. 41 Eliz, Part I, f 1), granted 1st June, 1599 This charter is printed at length in Nichols' Leicestershire, Vol. I, Part II., pp 409—416

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court(*k*). The procedure is the same as that of the Court of King's Bench before 1852. The court has been in abeyance since about 1886 (*l*). The charter of Queen Elizabeth also grants a court leet (*m*) and view of frankpledge, to be held twice a year before the mayor etc. (*n*). The corporation have also (*o*) a court of pie poudre (*p*).

(lxxxiv) *Leominster*

**Leominster.**

**378** The Leominster Court of Record (*q*) has jurisdiction in personal actions up to £100. The court is directed to be held every other week before the mayor and burgesses. The procedure is similar to that of the superior courts of common law before 1852. No rules or tables of fees are in existence. The court has been in abeyance since about 1846.

There is also a court of pie poudre (*r*), held before the mayor (*s*).

(lxxxv) *Lichfield.*

**Lichfield.**

**379** The Lichfield Court of Record (*t*) has jurisdiction in all actions, real, mixed, and personal, from 40s. to any amount. The court is directed to be held weekly. The recorder of Lichfield is judge of the court (*a*). The procedure and pleadings are similar to those in the superior courts of common law before 1852, and the costs about one-third of those of the superior courts. The court has been in abeyance since the establishment of county courts in 1846 (*b*).

(lxxxvi) *Lincoln*

**Lincoln  
Court for  
Foreigners.**

**380** The Borough Mote Court and the Court for Foreigners of Lincoln (*c*) have jurisdiction in all actions, real, mixed, and personal, to any amount. The two courts became amalgamated under the title of the Lincoln Court for Foreigners. There is a recorder of

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176, see p. 134, *ante*.

(*l*) Information kindly given by the town clerk.

(*m*) See p. 215, *post*.

(*n*) Appendix to Report of the Municipal Corporations Commissioners, Part III, pp. 1885—1897.

(*o*) Selden Society, Vol. XXIII, p. xv.

(*p*) See p. 136, *ante*.

(*q*) This court is held under the authority of a charter of Charles II (Pat. Rol., 17 Car. 2, Part V, No. 9), granted 6th June, 1666. Under the charter 1 Mar. (Pat. Rol., Part XV.), granted 28th May, 1554, the court was originally granted with jurisdiction limited to £5.

(*r*) See p. 136, *ante*.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 293—298, and information kindly given by the town clerk.

(*t*) This court is held under the authority of charters of James I. and Charles II (Pat. Rol. 21 Jac. 1, Part I., No. 8; Pat. Rol., 16 Car. 2, Part XX., No. 1).

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176, see p. 134, *ante*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1925—1926, and information kindly given by the town clerk.

(*c*) These courts are held under the authority of a charter of Charles I. (Pat. L., 4 Car. 1, Part XL., No. 1), granted 16th December, 1628.

the city of Lincoln, but in 1835 the judge of the court was a barrister of five years' standing, and consequently the recorder is not *ex officio* the judge of the court (*d*) The court has been in abeyance for about a hundred years This court appears to have originally been a court of husting, modelled on that of London (*e*)

There is also a court leet (*f*), to be held twice a year before the judge of the court of record (*g*)

This was an ancient Court of the Staple at Lincoln (*h*).

(LXXXVII) *Liskeard*

**381.** The Liskeard Court of Record (*i*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held before the mayor or his deputy, two capital burgesses (councillors), and before the chief steward (town clerk) if he be present There are no rules of the court or tables of fees in existence, and the procedure is unknown The court has been in abeyance for nearly a century

There is also a court leet (*k*) and view of frankpledge, to be held twice a year before the mayor or his deputy and two capital burgesses (councillors) (*l*), and a court of pie poudre (*m*), which has also long been disused (*n*)

(LXXXVIII) *Liverpool*

**382.** The Liverpool (*o*) Court of Passage (*p*) has jurisdiction in personal actions to any amount where the defendant or one of the defendants resides or carries on business within the jurisdiction of the court, or, by leave of the judge or registrar, when the whole or part of the cause of action arises within such jurisdiction, provided that, except where the whole cause of action arises within the

Liverpool  
Court of  
Passage

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss 175, 176, see p 134, *ante*

(*e*) See note (*d*), p 176, *post*

(*f*) See p 215, *post*

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2345—2355

(*h*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p 137, *ante*

(*i*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 29 Eliz., Part XIII, f. 32), granted 26th July, 1567

(*k*) See p 215, *post*

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 525—527

(*m*) See p 136, *ante*

(*n*) The court leet and the court of pie poudie are both held under the authority of the charter of Queen Elizabeth

(*o*) A charter of Henry III (Rot. Chart., 13 Hen. 3, Part I., memb. 9), granted 24th March, 1229, contained a grant to the burgesses of Liverpool of the franchise of "sac and soc," the word sac meaning a free court

(*p*) This court was granted by charters of Charles I and William III (Pat. Rol., 2 Car. 1, Part XV., No. 8), granted 4th July, 1626, 7 Will. 3, granted 26th September, 1695 The name seems to be derived from the fact that the court was originally intended for causes arising out of the imports and exports passing through (Encyclopædia Britannica, Vol. XIV., p. 714). Up to 1853 all proceedings were entitled "in the borough court of Liverpool." Information kindly given by the registrar.

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**Courts**

jurisdiction, no action under £20, in which the county court has jurisdiction, shall be commenced in this court (g) The court also has jurisdiction to try all actions of ejectment between landlord and tenant wherein the annual rent of the premises in question does not exceed £100, and where no fine is reserved or made payable (r)

This court, which is still in full operation (s), is regulated by certain local and personal Acts (t), and also by two public and general Acts (a) The local Act of 1834 provided for the appointment by the corporation of an assistant barrister of seven years' standing In 1893 the title of this judicial officer was changed to the "Presiding Judge of the Court of Passage" (b), with the same power, jurisdiction, and authority in regard to causes in the Court of Passage (subject to rules of court) as is possessed by a judge of the High Court sitting in chambers or at nisi prius

In case of the death, sickness, or unavoidable absence of the presiding judge, the recorder of Liverpool may act in lieu of him (c)

**Rules and**  
**procedure**

**383** The presiding judge has power, with the concurrence of the authority for the time being empowered to make rules for the Supreme Court, to adopt and apply to the Court of Passage any or all of the Rules of the Supreme Court, with such modifications, if any, as may be thought fit Such rules are not to be invalid by reason of extending or otherwise affecting the jurisdiction of the Court of Passage (d) Rules were made and confirmed under this power in 1903 and 1909 (e)

These rules practically assimilate the procedure of the court to that of the King's Bench and Admiralty Divisions of the High Court (f), except that summary judgment under Ord 14 cannot be obtained against a defendant who is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a

(g) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 2

(r) Liverpool Court of Passage Procedure Act 1853 (16 Vict c xcxi), s 48  
As to the Admiralty jurisdiction of the Court of Passage, see title ADMIRALTY, Vol I, p 140

(s) Three thousand three hundred and twenty five complaints were issued in 1905, of which a hundred and nineteen came on for trial (Civil Judicial Statistics, 1905, Parliamentary Paper, 1907 [C 3477], p 164)

(t) 4 & 5 Will 4, c xcii, 6 & 7 Will 4, c cxxxv, 7 Will 4 & 1 Vict c xcvi, 1 & 2 Vict c xcix, 5 & 6 Vict c lvi, Liverpool Court of Passage Procedure Act, 1853 (16 Vict c xcxi), Liverpool Corporation Act, 1880 (43 & 44 Vict c xxviii), s 4, and Liverpool Improvement Act, 1886 (49 & 50 Vict c lxxx), ss 29, 30

(a) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), Liverpool Court of Passage Act, 1896 (59 & 60 Vict c 21)

(b) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 6

(c) 4 & 5 Will 4, c xcii, s 2

(d) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 8 As to the power to make rules, see *R v Liverpool Corporation* (1887), 18 Q B D 510

(e) The 1903 Rules are published by the corporation of Liverpool, price 10s. 6d. For the 1909 Rules see [1909] W N, Pt II, 123

(f) The following is a list of the Rules of the Supreme Court, reproduced in the Rules of the Liverpool Court of Passage Ord 1, r 1, Ord 2, rr 1—3, 7, 8, Ord 3, rr 1—4, 6, 7, Ord 4, rr 1, 2, Ord 5, rr 3, 10—13, 16, 17, Ord 6, r 1, Ord 7, rr 1, 3, Ord 8, Ord 9, rr 1—5, 8—15, Ord 10, Ord 11 (adapted); Ord 12, rr 8—14, 17—22, 24—30, Ord 13, rr 1—10, 12—14, Ord 14, Ord 16, rr 1—9, 11—13, 16—31, 48—65; Ord 17, Ord 18, Ord 18A,

handicraftsman, a miner, or any person engaged in manual labour (g). The rules also contain tables of court fees and of solicitors' costs (h), and a scale of allowances to witnesses.

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**384.** Actions or matters may be removed from the Court of Passage by writ of *certiorari* or otherwise, if the High Court or a judge thereof deem it desirable, upon such terms as to payment of costs, giving security, or otherwise as the High Court or a judge thereof think fit to impose (i). There is a power to remit actions of tort (j) commenced in the High Court to the Court of Passage when the plaintiff has no visible means of paying the defendant's costs, and the plaintiff fails to give security for such costs, or to satisfy a judge of the High Court that his action is fit to be prosecuted in the High Court.

Removal of  
actions.

Actions of contract commenced in the High Court where the amount in dispute does not exceed £100 may be remitted to the Court of Passage in a similar manner as it might have been remitted to the county court (k). Actions of contract commenced in the Court of Passage where the amount in dispute is less than £10 may be similarly transferred to the county court (l). An appeal upon any issue tried in the Court of Passage is allowed under the same circumstances and rules as in the case of a trial at nisi prius (m).

**385.** There are a registrar and a deputy registrar of the court, who must be either practising barristers or practising solicitors of

Officers.

Ord 19, Ord 20, rr 1, 3, 4, 6, 7, Ord 21, rr 1—7, 9—21, Ord 22, rr 1—9, 11, 13—16, 20—22, Ord 23, Ord 24, Ord 25, rr 1—4, Ord 26, Ord 27, rr 1—9, 11—15, Ord 28, Ord 29, rr 1—8, 10—12, 14—18, Ord 30, Ord 31, Ord 32, Ord 33, r 1, Ord 34, rr 1—7, 9—12, Ord 35, r 8, Ord 36, rr 2, 4—8, 11—19, 22b, 28, 30—34, 36—40, 42, 43, 56—58, Ord 37, rr. 1—35, Ord 38, rr 1—19, 21—24, Ord 39, Ord 40, rr 1—9, Ord 41, rr 1, 3—10, Ord 42, rr 1, 2, 5—9, 11—24, 26—34, Ord 43, rr 1—4, 8—13, Ord 44, Ord 45, Ord 47, Ord 48, Ord 48A, rr 1—10, Ord 49, r 8, Ord 50, rr 1—8, 11, 12, Ord 51, rr 14—16, Ord 52, rr 1—11, 13, 14, 23, Ord 53, Ord 54, rr 1—12, 20, 22, 26—29, Ord 56, Ord 57, rr 1—13, 15—17, Ord 59, r 3, Ord 61, rr 6, 7, 16, 20, Ord 64, Ord 65, rr 1, 2, 5—7, 11, 13—17, 23, 27 (in part), Ord 66, rr 1, 2, 4, and 7 (in part), 8, 9, Ord 67, rr 1—7, 9—14, Ord 70, Ord 71 (adapted), Ord 72, r 2.

(g) Liverpool Court of Passage Rules, 1909, Ord 14, r 9.

(h) There are three scales of fees and costs: higher scale where the amount recovered exceeds £50, middle scale where in contract the amount recovered is not less than £20, and in tort than £10, lower scale where the amount recovered is less. The higher scale is based on the lower scale of the High Court, and the middle and lower on the county court scales, B and A.

(i) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 5. The defendant's common law right to remove an action by *certiorari* has not been taken away (*Edwards v Liverpool Corporation* (1902), 86 L. T. 627).

(j) *Ibid.*, s 4.

(k) *Ibid.*, s 3, see also title COUNTY COURTS, Vol VIII, p 438.

(l) Liverpool Court of Passage Act, 1896 (59 & 60 Vict c 21), s 4.

(m) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 10. An application lies to the Court of Appeal for a new trial of an interpleader issue or any other issue under this section (*Coates v Moore*, [1903] 2 K. B. 140, (C. A.)). The judge of the Court of Passage can give leave to appeal in any case in which a judge at chambers has power to do so (*Hunter v Jacobsen* (1899), 50 L. T. 641, (C. A.)). An appeal on an application for a new trial is to the Court of Appeal (*Anderson v Dean*, [1894] 2 Q. B. 222, (C. A.)). As to procedure in appeal, see *Bridge v Daine* (1873), 29 L. T. 477.

**SECT. 6**  
**Particular**  
**Courts.**

five years' standing. They are appointed by, and hold their office during the pleasure of, the city council (n). They have the powers (subject to rules of court) of a registrar, district registrar, master, taxing officer, and associate of the High Court (o). There is an appeal from all orders, decisions, and directions of the registrar and the presiding judge (p).

The officer of the court is the Sergeant-at-mace (q).

**Admiralty**  
**jurisdiction**

**386** In 1869 Admiralty jurisdiction was conferred on the county court of Lancashire holden at Liverpool (r), and consequently the Court of Passage acquired Admiralty jurisdiction to the like extent (s). The practice and procedure are regulated by the Rules of 1903 before referred to, and are similar to those of the High Court.

**Court leet**

**387** The corporation of Liverpool have also a court leet (t) and view of frankpledge under their charter

(lxxxix) *Llandoverly*.

**Llandoverly.**

**388** The Bailiff's Court of Llandoverly (u) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held monthly before the bailiff (now the mayor). Nothing is known of the practice and procedure of this court, which had fallen into abeyance long before 1834, and no rules or tables of fees are in existence (a).

(xc) *London*

**City of**  
**London**

**389** The courts of the city of London are (1) the Court of Hustings, (2) the Mayor's Court (b), (3) the court of equity before the Lord Mayor, (4) the City of London Court (c), (5) the sheriffs' courts, (6) the Court of Quarter Sessions for the City of London, (7) the Court of the Chamberlain; (8) courts leet and views of frankpledge

**Court of**  
**Husting**

**390** The Court of Hustings (d) is the highest and most ancient court in the city of London (e). The jurisdiction of this court

(n) Liverpool Improvement Act, 1886 (49 & 50 Vict c lxxx), s 29

(o) Liverpool Court of Passage Act, 1893 (56 & 57 Vict c 37), s 7

(p) *Ibid*, s 9

(q) See Appendix to Report of the Municipal Corporations Commissioners, 1855, Part IV, pp 2689—2713. Information kindly given by the registrar

(r) By Order in Council of 14th January, 1869, now repealed and consolidated by the County Courts (Admiralty Jurisdiction) Order in Council, 1899

(s) County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict c 71), s. 25. See also title ADMIRALTY, Vol I, p 140

(t) See p 215, *post*

(u) This court is held under the authority of a charter of Richard III (Rot. Chart., 2 Ric 3, Part I., memb 4), granted 26th January, 1485, confirmed by charters of 22 Hen. 8, granted 5th April, 1531 and 32 Eliz, granted 10th July, 1590

(a) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp 301—303. Information kindly given by the town clerk

(b) For this court see title MAYOR'S COURT, LONDON

(c) See title COUNTY COURTS, Vol. VIII, p 412

(d) "Husting" = "house and thing," and thus signifies a "thing" (from *tinga*, to speak) or court held in a house. Courts of hustings also were granted to Lincoln, Norwich, Oxford, Winchester, Great Yarmouth, and York.

(e) 2 Co Inst 321, cited per WILLES, J., in *London Corporation v Cox* (1867), L R 2 H L 239, at p 256

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originally extended over all actions real, mixed, and personal, to any amount, but the extent of the business in time (*f*) caused the erection of the separate jurisdictions of the Mayor's Court and the sheriffs' courts for personal actions and ejectments, while the jurisdiction of the Court of Husting was restricted to real and mixed actions (with the exception of ejectments), and to the action of replevin

The court was then divided into two divisions, the Court of Husting for Pleas of Land (*g*) and the Court of Husting for Common Pleas, which were directed to be held in alternate weeks. The recorder is the actual judge of the court, although, as in the case of the Mayor's Court (*h*), the lord mayor (or in his absence an alderman who has passed the chain) and sheriffs are technically the judges of the court.

Wills and deeds may also be enrolled in this court, but of late years very few have been so enrolled. The rolls of pleas of land commence 1273 and end 1724, while those of common pleas commence in 1272 and end 1506 (*i*).

**391** The two ancient sheriffs' courts for the Poultry Compter and for the Giltspur Street Compter have never been formally abolished (*h*), and in 1901 the Court of Common Council appointed the existing judges of the City of London Court to be respectively judges of the Poultry and of the Giltspur Street Compters

Sheriffs' courts.

**392** The court of equity held before the Lord Mayor was a species of court of review of the sheriffs' courts. A defendant after judgment might enter into recognisances to pay the debt or damages in case of affirmance, and to abide by such order as the Lord Mayor should make. The judge of the sheriffs' court attended with the record and his notes together with the recorder and the City Solicitor. After argument the Lord Mayor has authority to order that the plaintiff be debarred from recovering the debt or damages, or that the debt or damages shall be abridged, *i.e.*, reduced, or that the defendant shall have time on giving security for payment, or that the judgment shall be suspended to allow the defendant to file a bill in equity for an injunction, or he may decline to interfere (*l*).

Court of equity.

**393** The Court of Quarter Sessions for the City of London is held (*m*), before the Lord Mayor, the aldermen, and the

Quarter sessions.

(*f*) Apparently about the thirteenth century

(*g*) This court was last held on 2nd June, 1908, to enrol a deed

(*h*) See title MAYOR'S COURT, LONDON. In the absence of the Lord Mayor the Court of Husting could be held by six aldermen (*Markwick v London* (1707), 2 Bro Parl Cas 409)

(*i*) Sharpe, Calendar of Wills, Court of Husting, London, Vol I, Introduction, pp xix, xx.; Pulling, Laws, Customs, and Regulations of London, p 170, Appendix to Report of the Municipal Corporations Commissioners (London and Southwark), Parliamentary Paper, 1837 (60), p. 123.

(*k*) Cohen, The Law and the City, p 18

(*l*) 4 Co Inst 248. This court has fallen into disuse

(*m*) Under the authority of charters of Edward IV., James I., and Charles I.

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**Particular**  
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recorder, of whom the Lord Mayor or an alderman who has passed the chair, or the recorder, and at least three other aldermen must be present. Since 1851 (*n*) this court has the same powers to try criminal offences as other quarter sessions (*o*), but as the Central Criminal Court has concurrent jurisdiction in the case of offences occurring in the City, such offences are, as a matter of convenience, tried at the Central Criminal Court (*p*). Appeals, however, from courts of summary jurisdiction are heard at the City Quarter Sessions. The Court of Quarter Sessions has in addition jurisdiction as to—(1) estreats, (2) examining and allowing the accounts of the City of London Trophy Tax, as a preliminary to the issue of a warrant for the raising of the tax (*q*), (3) expenses in cases dismissed and other small matters, (4) the assessment of compensation for lands taken under Michael Angelo Taylor's Act (*r*), (5) business with regard to forfeited recognisances, (6) poor law and rating appeals.

**Chamberlain's**  
**court**

**394** The Chamberlain of the City of London has also a court (*s*), which existed in the time of Edward VI, for hearing and determining differences and disputes between apprentices and their masters. The judges of the court are the Chamberlain and the Controller of the Chamber (who is the Vice-Chamberlain). Summonses are granted for a fee of 1s. Counsel and solicitors have audience as the "friends" of the parties. An appeal lies to the recorder and a jury in the Mayor's Court (*t*).

**Ward motes**

**395** In each of the twenty-six wards of the City of London there is a ward-mote, held annually on St Thomas's Day, which is equivalent to a court leet and view of frankpledge (*a*).

**Courts leet.**

**396** There is also a court leet and court baron for the manor of Finsbury, held yearly before the steward of the manor, and another for the manor of Duke's Place, held before the Lord Mayor as steward of that manor.

(Rot. Cart., 1 Edw. 4, 2, 3 & 4 Edw. 4, No. 10, granted 9th November, 1462, 6 Jac. 1, granted 24th September, 1608, 1 Car. 16, granted 18th October, 1638), Matland, *History of London*, Vol. I, pp. 290, 308.

(*n*) Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), s. 13, which repealed s. 17 of the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36).

(*o*) See p. 82, *ante*.

(*p*) See p. 87, *ante*.

(*q*) Militia (City of London) Act, 1820 (1 Geo. 4, c. 100). The tax is raised under 13 & 14 Car. 2, c. 3, s. 27.

(*r*) 57 Geo. 3, c. 211.

(*s*) The jurisdiction of this court has been upheld on proceedings on mandamus (Royal Commission, 1893, Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London), and is expressly preserved by the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 13.

(*t*) See Royal Commission, 1893, Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London, and Appendix to Report of the Municipal Corporations Commissioners (London and Southwark), Parliamentary Paper, 1837 (60), p. 100. See also Emerson, *Courts of Law of the City of London*.

(*a*) See p. 215, *post*.



(xc.) *Ludlow.*

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Ludlow

**397** The Ludlow Court of Record (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every week. There is a recorder of Ludlow, who is consequently judge of the court (*c*). The proceedings are assimilated as nearly as possible to those in the Court of Common Pleas before 1852. A table of fees existed in 1834. Solicitors have audience in this court.

A charter of Edward VI. granted to the corporation a court of pie poudre (*d*), which had fallen into abeyance before 1834.

The corporation has also a court leet (*e*), held once a year before the town clerk as steward (*f*).

(xcii.) *Lyme Regis*

Lyme Regis

**398** The corporation of Lyme Regis (*g*) had a grant of a court of hustings (*h*), to be held according to the customs of London. The court has jurisdiction in actions of debt and assumpsit to any amount. The court is directed to be held weekly before the mayor and capital burgesses (now councillors). The proceedings are similar to those in the superior courts of common law before 1835. Rules of practice dated 1841 are in existence. No table of fees is in existence, but certain bills of costs are preserved. Writs of summons are still issued, but judgment is usually obtained by default.

The corporation has also a court leet (*i*).

(xciii.) *Lynn or King's Lynn*

**399** The Guildhall Court of King's Lynn (*k*), or Lynn Regis, Lynn, has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week. There is a recorder of the borough, who is judge of the court (*l*). The procedure and pleadings are similar to those in the superior courts of common law before 1830. A table of fees is in existence (*m*), but the court has been in abeyance for many years.

(*b*) This court is held under the authority of a charter of Edward IV (Rot. Cart, 1 Edw 4, Part II, No 12), granted 7th December, 1461.

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.

(*d*) See p 136, *ante*.

(*e*) See p 215, *post*.

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1833, Part IV, pp 2783—2793.

(*g*) This court is held under the authority of a charter of Edward I (Rot. Cart, 13 Edw 1, memb 31), granted 1st January, 1285.

(*h*) As to this name, see note (*d*), p 176, *ante*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1303—1309, and information kindly given by the town clerk, see p 215, *post*.

(*k*) This court is held under the authority of a charter of Henry VIII (Pat. Rol, 29 Hen 8, Part V).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176. See p 134, *ante*.

(*m*) Printed in Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, p 2403.

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The same charter grants to the corporation a court of Tolbooth for hearing and determining civil pleas where the cause of action arose on the water. There is also a court of pie poudre (*n*), to be held once a year (*o*), and a court leet (*p*) and view of frankpledge, held yearly before the mayor (*q*)

(xciv) *Macclesfield*

**Macclesfield**

**400** The Earl of Derby as hereditary steward (*r*) of the manor and forest of Macclesfield has a court for the liberty of the Hundred of Macclesfield and also a court for the manor and forest of Macclesfield, both of which are held within the town of Macclesfield (*s*). The jurisdiction of these courts extends to personal actions to any amount. They are held before the deputy steward (*t*). There is no recorder of the borough of Macclesfield (*a*)

The Earl of Derby has also a court leet (*b*) in Macclesfield, held before the deputy steward (*c*).

The corporation also appears to have a court of portmote, with jurisdiction in all actions, real, mixed, and personal, to any amount, but whether by prescription or under charter is unknown (*d*). The corporation of Macclesfield has a court of pie poudre (*e*).

(xcv) *Maidenhead*.

**Maidenhead**

**401** The Maidenhead Court of Record (*f*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £20, where either the plaintiff or the defendant is an inhabitant of the town.

See p 136, *ante*

(*o*) Under the authority of a charter of James I (Pat. Rol., 2 Jac 1, Part XXVII), the corporation of King's Lynn have the grant of a court of Admiralty, see p 105, *ante*

(*p*) See p 215, *post*

(*q*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2389-2404

(*r*) Under a grant to Thomas, Lord Stanley, and his heirs 11th January, 1462

(*s*) See definition of "borough civil court," Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 7 (1)

(*t*) In 1833 considerable business was done in these courts, in which causes were tried four times a year. The records of these courts from the time of Edward III. exist. In the Record Office there are court rolls of 22 Edw 3 and following years, portfolio 155, Nos 55-58

(*a*) There was a recorder of Macclesfield at the time of the passing of the Municipal Corporations Act, 1835 (5 & 6 Will 4, c 76)

(*b*) See p 215, *post*

(*c*) Report on certain Boroughs by T J Hogg, Parliamentary Paper, 1838 (686), pp 61-63

(*d*) A charter dated 29th May, 1261, of Edward, eldest son of Henry III., granted to the burgesses of Macclesfield that they should not be impleaded or adjudged of any plea outside their borough (Earwaker, Hist of East Cheshire, Vol II., p 460). Court Rolls of this court of 22 Edw 3 and following years are in the Record Office, Court Rolls, portfolio 155, Nos 55-58

(*e*) This court is held under the authority of a charter of Charles II., granted 19th November, 1684 (Earwaker, History of East Cheshire, Vol II., p 462) See p 136, *ante*

(*f*) This court is held under the authority of a charter of 15 Charles II. This charter was surrendered, and a new charter in similar terms, so far as relates to jurisdiction, was granted (1 Jac 2). Neither of these charters appear to have been enrolled.

The court is directed to be held every three weeks before the mayor (and bridgemasters). Nothing appears to be known as to the practice and procedure of the court, but in 1834 a table of fees was in existence

The charter also granted a court of *pie poudre* (*g*), which has been in abeyance for a long period, and a court of the Clerk of the Markets (*h*), to be held once a year before the mayor (*i*)

(xcvi) *Maidstone.*

**402** The Maidstone Court of Pleas (*k*) has jurisdiction in all actions, real, mixed, and personal, within the borough, and in mixed and personal actions and in replevin to any amount in the parishes of East Faileigh, Barmynge, Looze, Boxley, Allington, Milhale, Newwhyth, Linton, and Otham. The court is directed to be held every other week. There is a recorder of Maidstone, who is consequently judge of the court (*l*). Nothing is known of the practice and procedure of the court, which has been in abeyance since 1778. Maidstone.

Under the same charter the corporation has a court of *pie poudre* (*m*), which has been in abeyance for a long period, and a court of conservancy, for the purpose of preserving the banks of the stream and the fishery, but nothing is known of the procedure of this court

There is also a court *leet* (*n*), held annually before the mayor and justices (*o*).

(xcvii) *Maldon.*

**403** The town of Maldon (*p*) has (1) a court of record for the trial of civil actions, which has jurisdiction in personal actions to any amount. The court was directed to be held every three weeks. The recorder of Maldon was judge of the court (*q*), which fell into abeyance before 1768. (2) A court of record for passing the estates of married women. The property must lie within the borough. (3) A court of *pie poudre* (*r*). Maldon.

(*g*) See p 136, *ante*

(*h*) See p 137, *ante*

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2909—2913, and information kindly given by the town clerk

(*k*) This court is held under the authority of a charter of George II (Pat Rol, 21 Geo 2, Part I, No 26, granted 17th July, 1747)

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176. See p 134, *ante*

(*m*) See p 136, *ante*.

(*n*) See p 215, *post*

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 751—764

(*p*) These courts are held under the authority of a charter of George III (Pat Rol, 50 Geo 3, Part XIII, No 12). The court of record was in existence in 1383. The first grant appears to be by charter of 18 Edw 1 (printed in Calendar of Charter Rolls, Vol. II., pp 351, 352), which contains a grant of "*sec and soc*". The charter of George III also contains the grant of a court of admiralty (see p 105, *ante*). This court was last held in 1818.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.

(*r*) See p. 136, *ante*. Appendix to Report of the Municipal Corporations

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Courts

## Marlborough

(xcviii.) *Marlborough.*

**404** The Mayor's or King's Court of Marlborough (s) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks before the mayor. The pleadings are as in the superior courts of common law before 1852.

The corporation also has a court of pie poudre (t), disused in 1835, and a court leet (u), held twice a year (v).

(xcix.) *Monmouth*

## Monmouth.

**405** The Monmouth Borough Court (c) has jurisdiction in all actions, real, mixed, and personal, to any amount (d). The court is directed to be held before the mayor and bailiff. Rules and a table of fees were made in 1833. Very little has been done in this court since 1795 (e).

(c) *Neath*

## Neath.

**406** The Neath Court of Pleas (f) has jurisdiction in actions of debt up to £100. The court is directed to be held before the constable of the castle of Neath and (the portreeve) now the mayor. This court almost fell into abeyance in 1798, but the date of the last proceeding is 1818. No rules or tables of fees are in existence (g).

The mayor has also authority to hold a court baron (h), but it has not been held since 1816.

(i) *Newark*

## Newark.

**407** The Newark Court of Record (i) has jurisdiction in actions of trespass, debt, detinue, and replevin to the amount of £200. There is a recorder of Newark, who is consequently judge of the court (k). The practice, which is regulated by rules made in 1837 by the then recorder and confirmed by three judges of the

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Commissioners, 1835, Part IV, pp. 2431—2447, and information kindly given by the town clerk.

(s) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 18 Eliz., Part III, f. 4 b).

(t) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., p. 85.

(u) *Ibid*.

(c) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 83—85.

(d) This court is held under the authority of charters of Edward VI., James I., and Charles II. (Pat. Rol., 3 Edw. 6, Part I., granted 30th June, 1550; Pat. Rol., 3 Jac. 1, Part XII., fo. 27, granted 2nd September, 1606; Pat. Rol., 17 Car. 2, Part I., No. 1, granted 18th May, 1666).

(e) The court is believed to have been originally granted by a charter of 40 Hen. 3. There is no charter roll for this year in existence.

(f) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 321—325, and information kindly given by the town clerk.

(g) This court is held under the authority of a charter of Henry VII. (Pat. Rol., 14 Hen. 7, Part II.).

(h) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 333—336, and information kindly given by the town clerk.

(i) See p. 216, *post*.

(k) This court is held under the authority of a charter of Charles I. (Pat. Rol., 2 Car. 1, Part XV., No. 10), granted 1st July, 1626.

(l) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

superior courts of common law (*l*), is similar to that of the superior courts before 1852. The court has not been held since 1898 (*m*).

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(*cu*) *Newbury*

**408** The Newbury Court of Record (*n*) has jurisdiction in personal actions up to £13 6s 8d (20 marks), but in consequence of there being a recorder of Newbury, who is judge of the court (*o*), the jurisdiction is increased to £20 in personal actions, and extends to include actions of ejectment where the rent of the premises sought to be recovered does not exceed £20 and upon which no fine is reserved or made payable (*p*). The court is directed to be held every week. The process is by summons, and the pleadings and procedure, which are governed by rules made in 1832 (*q*), are similar to those in the superior courts of common law before 1852. The court has been in abeyance for many years. The corporation also have a court of pie poudie (*r*), but in 1834 it had only been held once within the memory of the then members of the corporation.

Newbury.

As lords of the manor of Newbury the corporation have a court leet (*s*), to be holden twice a year (*t*).

(*cui*) *Newcastle-under-Lyme*

**409** The Court of Record of Newcastle-under-Lyme (*a*) has jurisdiction in actions of contract or trespass up to £50. The court is directed to be held every three weeks. There is a recorder of Newcastle-under-Lyme, who is judge of the court (*b*). The pleadings and practice are similar to those in the superior courts before 1852. There are no rules or tables of fees in existence. The court has been in abeyance for about seventy years (*c*).

Newcastle-under-Lyme.

The corporation also have a court of pie poudie (*d*).

(*l*) Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp 129—138.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1935—1937, and information kindly given by the town clerk. See also Civil Judicial Statistics, 1864—1905.

(*n*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 38 Eliz., Part VI, fo 15 b). There was a surrender of this charter and a regrant by a charter of the first year of James II., which was in identical terms as regards the court.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176. See p 134, *ante*.

(*p*) *Ibid*, s 183. See p 130, *ante*.

(*q*) These rules are founded on those drawn up for the corporation of Reading in 1793 by Mr Dampier (afterwards Dampier, J.).

(*r*) See p 136, *ante*.

(*s*) See p 215, *post*.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 89—91, and information kindly given by the town clerk.

(*a*) This court is held under the authority of charters of Queen Elizabeth and Charles II (Pat. Rol., 32 Eliz., Part XX, fo 30 b, granted 8th May, 1590; Pat. Rol., 16 Car 2, Part XIX).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176. See p 134, *ante*.

(*c*) Information kindly given by the town clerk.

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1951—1954. See p 136, *ante*.

**SECT. 5.  
Particular  
Courts.**  
  
**Newcastle-upon Tyne**

(civ) *Newcastle upon-Tyne*

**410** The burgess (e) and non-burgess (f) courts of Newcastle-upon-Tyne (g) have jurisdiction in all actions, real, mixed, and personal, to any amount. Actions against freemen are brought in the burgess court and those against non-freemen in the non-burgess court. The jurisdiction of these courts was extended in March, 1838, to the borough of Gateshead (h). There is a recorder of Newcastle-upon-Tyne, who is consequently judge of these courts (i). The practice and procedure are regulated by the Common Law Procedure Act, 1852 (k). Rules were also made in 1871 under the Debtors Act, 1869 (l). There is a printed table of fees and solicitors' costs (m). Solicitors have audience. The court is still in use.

The corporation have also a grant of a court of conservancy, to be held once a year (m).

There was an ancient Court of the Staple at Newcastle-upon-Tyne (n).

(ov) *Newport (Isle of Wight)*

**Newport (Isle of Wight)**

**411** The Newport Court of Record (o) has jurisdiction in mixed and personal actions to any amount (p). The court is directed to be held twice a week, before the mayor and aldermen, or any three of them, the mayor being one. The procedure is almost exactly similar to that of the King's Bench before 1852. This court fell into abeyance about 1836.

The charter also granted a court of pie poudie (q), held before

(e) Formerly called the mayor's court. This court was a prescriptive court dating back at least to the time of Henry I (see Stubbs, *Select Charters*, p. 107). The local tradition is that this court existed in Roman times.

(f) Formerly called the sheriff's court. Originally granted by charter of 1 Hen. 4. The corporation possess records of this court back to 1613.

(g) These courts are held under the authority of a charter of Queen Elizabeth (Pat. Rol., 42 Eliz., Part XXI, fo. 39 b). Confirmed by a charter of 2 Jac.

(h) By warrant of Her late Majesty in Council under the Municipal Corporation (General) Act, 1837 (7 Will. 4 & 1 Vict. c. 78), s. 35, now repealed and re-enacted by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 5, 185. This is apparently the only instance in which this power of increasing the area of jurisdiction of a local court of record has been exercised.

(i) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 131, *ante*.

(k) The whole of this Act, 15 & 16 Vict. c. 76, and the rules made thereunder were extended to these courts by Order in Council of 13th September, 1854 (*Statutory Rules and Orders Revised*, Vol. VI, *Inferior Court, England*, p. 138).

(l) 32 & 33 Vict. c. 62. The rules are printed in *Statutory Rules and Orders Revised*, Vol. VI, *Inferior Court, England*, pp. 139-144.

(m) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1633-1648, and information kindly given by the town clerk.

(n) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p. 137, *ante*. Under charter of Henry VI (Rot. Cart., 21-24 Hen. 6, No. 39) the burgesses of Newcastle-upon-Tyne were exempted from the jurisdiction of the Admiral of England, but this exemption is now repealed (see p. 90, *ante*).

(o) This court is held under the authority of a charter of Charles II (Pat. Rol., 13 Car. 2, Part XIII, No. 4).

(p) There seems once to have been a court within the borough, with cognisance of pleas of land, and in which deeds were regularly registered.

(q) See p. 136, *ante*.

the mayor and a court of admiralty (*r*). There is also a court leet (*a*), to be held twice a year before the town clerk as steward.

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Particular  
Courts.

(cvi) *Newport (Monmouth)*.

**412.** The Newport Court of Record (*b*) has jurisdiction in actions of debt to any amount. It ought to be held weekly before the mayor. No rules or tables of fees or costs are in existence, and in 1888 the practice was unknown. Newport (Monmouth)

Apparently the corporation have a court of pie poudie (*c*).

(cvii) *Northampton*

**413.** The Court of Record of the borough of Northampton (*d*), Northampton. also called the Northampton Court of Pleas, which is still in use, has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks. The recorder of Northampton is judge of the court (*e*). The procedure is regulated by the Common Law Procedure Acts, 1852 (*f*) and 1854 (*g*). The whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*h*), have been extended to this court. There is a table of fees, made subsequently to 1845.

There is also a court of the clerk of the market (*i*), held before the mayor (*k*).

(cviii) *Norwich*.

**414.** The Norwich Guildhall, or Sheriff's Court (*l*), has jurisdiction in mixed and personal actions to any amount. The court is directed to be held twice a week before the steward, who must Norwich Guildhall Court.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 773—783, and information kindly given by the town clerk

(*a*) See p 215, *post*

(*b*) This court is held either under a prescriptive right or under the authority of a charter of James I (Pat Rol, 21 Jac 1, Part XI), granted 20th September, 1623. This charter confirms the prescriptive franchises of the corporation, as well as those granted by a charter of Henry, Duke of Buckingham. The court of record appears on the whole to have a prescriptive origin.

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 341—347. See p 136, *ante*.

(*d*) This court is held under the authority of a charter of George III (Pat Rol, 36 Geo 3, Part VI, No 1).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.

(*f*) 15 & 16 Vict c 76. The whole of the provisions of this Act and of the rules thereunder were extended to this court by Order in Council of 25th November, 1853 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p 144).

(*g*) 17 & 18 Vict. c 125. The whole of the provisions of this Act and of the rules thereunder were extended to this court by Order in Council of 14th November, 1854 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p 145).

(*h*) 18 & 19 Vict. c 67, by Order in Council of 19th October, 1855 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p 145).

(*i*) See p 137, *ante*.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1965—1970, and information kindly given by the town clerk.

(*l*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 15 Car 2, Part VI, No 4).

**SECT 5.  
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be a barrister of five years' standing. Consequently the recorder of Norwich is not *ex officio* the judge of this court (*m*)

The procedure is that established by the Common Law Procedure Acts, 1852 (*n*) and 1854 (*o*). The whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*p*), have been extended to this court, as also have been those of the schedule to the Borough and Local Courts of Record Act, 1872 (*q*)

The court is still in use. It appears to have originated in a court of husting, on the model of that of London (*r*)

Norwich  
Court of  
Pleas

There is also a court of pleas, with jurisdiction in real actions, to be held before the mayor and sheriffs or one of them. As the steward does not appear to have been judge of this court in 1835, the recorder of Norwich is judge (*s*)

Court of  
Equity.

The corporation have a court of equity (*a*), to be held before the mayor and two justices. This court had been in abeyance long before 1833 (*b*). It does not seem to have been a court of record.

The corporation of Norwich have had a court leet (*c*) and view of frankpledge since the thirteenth century (*d*)

There was an ancient Court of the Staple at Norwich (*e*)

(*cir*) Nottingham

Nottingham.

**415** Under a charter of Henry VI (*f*) the Court of Record of Nottingham has jurisdiction in all actions, real, mixed, and personal, to any amount. The jurisdiction of this court has been excluded in all cases in which the county court has jurisdiction (*g*). The court is directed to be held from day to day. The recorder of Nottingham is judge of the court (*h*). The procedure is similar

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*. At the present time there is a judge of the court appointed by the corporation.

(*n*) 15 & 16 Vict c 76. This Act, with certain exceptions, and the rules thereunder were extended to this court by Order in Council of 3rd July, 1854 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 146)

(*o*) 17 & 18 Vict c 125. This Act, with certain exceptions, and the rules thereunder were extended to this court by Order in Council of 20th May, 1857 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 147)

(*p*) 18 & 19 Vict c 67, by Order in Council of 20th May, 1857, *ubi supra*

(*q*) 35 & 36 Vict c 86, by Order in Council of 17th July, 1873 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 148)

(*r*) See note (*d*), p 176, *ante*

(*s*) See note (*r*), p 134, *ante*

(*a*) This court was granted to the corporation by a charter of Philip and Mary (Pat. Rol, 2 & 3 Phil & Mar, Part VIII)

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2459—2468

(*c*) See p 215, *post*

(*d*) See "Leet Jurisdiction in the City of Norwich," Selden Society Publications, Vol V

(*e*) Statute of the Staple (27 Edw 3, stat 2, c 19). See p 137, *ante*

(*f*) Pat. Rol, 27 Hen 6, Part II, memb 6, printed with a translation in Records of the Borough of Nottingham, Vol II, pp 186—209 (see pp 194, 195)

(*g*) By Order in Council of 13th November, 1858 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 149)

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.



to that of the superior courts of common law before 1852. No rules or tables of costs or fees are known to be in existence. The court has been in abeyance for a long period (e).

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Courts.

The corporation, as lords of the manor, have a court leet (j), to be held twice a year (k).

The charter also exempts the borough from the jurisdiction of the Clerk of the Market of the King's Household (l).

(cx) *Oswestry*

**416** Under a charter of Charles II (m) the Oswestry Court of Record has jurisdiction in personal actions to any amount. The court is directed to be held weekly. The recorder is judge of the court (n). The practice and procedure are similar to those in the superior courts of common law before 1852. By the charter the fees are to be the same as those in the Ludlow Court of Record (o). These are stated to be half those taken in the Court of Common Pleas before 1852. The court does not appear to have been held since 1881 (p).

Oswestry.

The charter also granted to the corporation a court of pie poudre (q), which has long been in abeyance (r).

(cxi) *Oxford University*

**417** A charter of Edward III (s) granted to the university that in all causes, where a clerk is one party, in contracts and trespasses the chancellor of the university should have cognisance thereof. Another charter of Henry VIII (t) made the jurisdiction exclusive (a) so far as regards defendants (b). By the university statutes (c) the court of the commissary or vice-chancellor of the

Oxford  
University.

(s) No record of any business being done appears in the Civil Judicial Statistics, 1868—1905.

(j) See p 215, *post*.

(k) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1985—1994.

(l) See p 137, *ante*.

(m) Pat. Rol, 25 Car 2, Part II, No 5, granted 13th January, 1671.

(n) Municipal Corporations Act, 1862 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.

(o) See p 179, *ante*.

(p) Civil Judicial Statistics, 1882—1905.

(q) See p 136, *ante*.

(r) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2823—2829.

(s) Pat. Rol, 5 Edw 3, Part II, memb 8, granted 16th October, 1331.

(t) 14 Hen 8, set forth in "Registrum Privilegiorum Almae Universitatis Oxoniensis" (1770), p 40. This charter is confirmed by stat 13 Eliz c 29. The sections in question, with a translation, are printed in the report of *Ginnett v Whittingham* (1886) 16 Q. B D 761, at pp 762—765.

(a) Where a plaintiff who resided in London brought an action in the High Court for libel against a resident undergraduate member of the university, and the chancellor claimed cognisance of the action in his court under the charter, it was held that the privilege of the charter extended to cases in which the plaintiff resided outside the limits of the city of Oxford, and therefore that the claim must be allowed. (*Ginnett v Whittingham*, *supra*).

(b) *Hayes v Long* (1786), 2 Wils 310.

(c) *Statuta Universitatis Oxoniensis*, 1907, tit. XXI, s. 1 (2).

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university is directed to be held once a week, even in vacation (if it seems fit to the vice-chancellor) before the vice-chancellor or his deputy, assisted by the two proctors of the university (if they think fit to attend) The deputy of the vice-chancellor must be either a doctor or bachelor of civil law (*d*) There is a registrar of the court, who must be a master of arts or bachelor of civil law (*e*).

The practice and procedure in the court are regulated by rules, forms, and scales of fees and costs made in 1892 by the vice-chancellor and confirmed by the rule committee (*f*)

The enactments and rules of the Supreme Court relating to appeals from county courts have been applied to this court (*g*)

Oxford  
University.

If on the hearing of a cause the machinery or jurisdiction of the court appear to the judge inadequate to do justice between the parties, he may in his discretion give leave to either party to take proceedings in some other competent court (*h*)

Proctors, at least three in number, being masters of arts, or bachelors of civil law, skilled in the practice of the law and approved by the vice-chancellor, or barristers and solicitors approved by the vice-chancellor, have the right to practise in the court By leave of the court barristers not qualified as proctors may be heard Leave to be heard by counsel must be obtained by special application (*i*) This court is still in full operation (*k*)

The court has also criminal jurisdiction in all cases in which a resident member of the university is prosecutor or defendant, except in treason, felony, or mayhem The jurisdiction is exclusive where a resident member of the university is defendant (*l*)

By a charter of Edward III (*m*) the assize of bread, wine, and beer and the supervision of weights and measures in the city of Oxford and its suburbs were granted to the university Under this power two clerks of the market (*n*) are appointed from among the

(*d*) Statuta Universitatis Oxoniensis, 1907, tit XXI, s 1 (3) The 1908 edition says barrister of five years' standing, who is a member of Convocation.

(*e*) *Ibid*, s 1 (4), and shall be a solicitor of the Supreme Court

(*f*) Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, pp 150—168 The judge may in any case allow such further occasional costs as he may deem to have been fairly and properly incurred (Statutory Rules and Orders Revised, Vol VI, Inferior Courts, England, p 167)

(*g*) By Order in Council of 23rd August, 1894, made under the Judicature Act, 1875 (38 & 39 Vict c 77), and the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict c 49) (Statutory Rules and Orders Revised, Vol VI, Inferior Court England, p 168)

(*h*) Rules of the Vice Chancellor's Court of the University of Oxford, r 23

(*i*) *Ibid*, r 19

(*k*) Information kindly given by the registrar

(*l*) There is some doubt as to how far the jurisdiction is interfered with by the Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49) This depends on whether the chancellor or vice-chancellor in the exercise of their jurisdiction is a court of summary jurisdiction within the meaning of the Act See this point discussed in Rashdall, Universities of Europe, Vol II, Part II., pp 786-789.

(*m*) 29 Edw 3, 27th June, 1355, printed in Ayliffe, University of Oxford, Vol II, Appendix, p xxviii

(*n*) See p. 137, *ante*.

heads of houses, masters of arts, and bachelors of divinity, medicine, and law, one by the chancellor and the other by the vice-chancellor. The Clerks of the Market may either punish offenders themselves or bring them before the vice chancellor (o).

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Particular  
Courts.

(cxii) *Oxford City*

**418** The Oxford Mayor's Court (p) has jurisdiction over personal actions to any amount. Members of the university are, however, exempt from the jurisdiction of the court. The pleadings are as at common law before 1852. The court is directed to be held every week. There is a recorder of Oxford, who is consequently judge of the court (q), which is still used (r). Oxford.

The charter also confirms the jurisdiction of the Oxford Court of Hustings (s), which is co-extensive in personal actions with that of the Mayor's Court, and in addition has jurisdiction in real and mixed actions.

The corporation have also a court of pie poudrie (t), which had long been in abeyance in 1833, and a court leet (a).

(cxiii) *Pembroke*

**419** The Mayor's Fortnight Court of Pembroke (b) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held from fifteen days to fifteen days before the mayor or his deputy. The court had been in abeyance for sixty years in 1831. Pembroke.

The charter also granted a court of pie poudre (c), which also had fallen into disuse before 1834 (d).

(cxiv) *Penryn*

**420** The Penryn Court of Record (e) had jurisdiction in personal actions up to the amount of £10. The court is directed to be held Penryn.

(a) Statuta Universitatis Oxoniensis, 1907, tit. XVII, s. 6.

(p) This court is held under the authority of a charter of James I (Pat. Rol., 3 Jac. 1, Part I, f. 1), granted 29th July, 1605. This charter only confirms a franchise resting on prescription as well in the case of the Mayor's Court as in that of the Court of Hustings.

(q) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(r) One plaint was entered in 1904, but it was withdrawn or struck out (Civil Judicial Statistics, 1904, Parliamentary Paper, 1906 [C. 2915], p. 165). No plaint was entered in 1905 (Civil Judicial Statistics, 1905, Parliamentary Paper, 1907 [C. 3177], p. 165).

(s) See note (d), p. 136, *ante*.

(t) See p. 136, *ante*.

(a) Appendix to Report of the Municipal Corporations Commissioners, 1833, Part I, pp. 97—103.

(b) This court is held under the authority of a charter of Richard III., granted 19th March, 1483, confirmed by charter of 5 Jac. 1, granted 6th July. In the charter the court is called a "court of hundred," but the title of the "Mayor's Fortnight Court" appears to have been commonly used.

(c) See p. 136, *ante*.

(d) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 365—369.

(e) This court is held under the authority of a charter of James I (Pat. Rol.,

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**Particular**  
**Courts**  
**—**

every three weeks before the mayor, aldermen (and recorder), or two of them, of whom the mayor must be one. There is no recorder of Penryn. No records, rules, or tables of fees relating to this court are in existence.

There is also a court of the manor of Penryn Forryn, with an extensive but undefined jurisdiction extending over the borough of Falmouth (*f*).

(cxv) *Penzance*

**Penzance.**

**421.** The Penzance Court of Record (*g*) has jurisdiction in personal actions up to £50. The court is directed to be held every fortnight. There is a recorder of Penzance, who is judge of the court (*h*). In 1833 an old book of rules was in existence. The court has been in abeyance for many years. Solicitors are entitled to audience in this court (*i*).

(cxvi) *Peterborough*

**Peterborough**

**422** The Dean and Chapter of Peterborough (*k*) have a court of common pleas (*l*), with jurisdiction in mixed and personal actions to any amount arising in the soke of Peterborough. The court is directed to be held weekly before the steward of the dean and chapter, who is always a solicitor. His remuneration is derived from fees (*m*). The court has not been used since 1893 (*n*). Under other charters the dean and chapter have also a court of pie poudre (*o*), a court leet (*p*), and view of frankpledge (*q*).

18 Jac 1, Part XII, No 2), granted 5th February, 1621. This charter was surrendered, and a new charter in similar terms as to the court granted, 1 Jac 2. This charter seems never to have been enrolled.

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 563, 564.

(*g*) The court is held under the authority of a charter of James I (Pat Rol, 12 Jac 1, Part XIX, No 1), granted 9th May.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*.

(*i*) Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part I, pp 571, 572.

(*k*) This court is held under the authority of a charter of Henry III (Chart Rol, 34 Hen 3, memb 8), granted 15th May, 1270. This charter grants to the abbot and convent of Peterborough, of whom the dean and chapter are successors "sac and soc" and all pleas of withenam within their hundreds in Northamptonshire.

(*l*) The court was anciently called "Curia de Portman Mote" (Bridges and Whalley, Hist of Northamptonshire, Vol II, p 537).

(*m*) Parliamentary Paper, 1888 (C 187), LXXIII 169.

(*n*) One plaint was entered in 1893, which was determined for the plaintiff by consent (Civil Judicial Statistics, 1893, Parliamentary Paper, 1894 [C. 7510], p. 38, xov).

(*o*) See p 136, *ante*.

(*p*) See p 215, *post*.

(*q*) See Placita de Quo Warranto, *temp* Edw 1, 2, 3, p 551. The justices of the liberty of Peterborough appear to be entitled to have separate commissions of oyer and terminer and of gaol delivery directed to them. This was done on 22nd December, 1845. These commissions remained in force, notwithstanding the death of the late Queen Victoria, by the operation of s. 1 of the Demise of

(cxvii) *Plymouth*.

SECT. 5.  
Particular  
Courts.  
—  
*Plymouth*.

**423** The Plymouth Mayor's Court or Borough Court (a) has jurisdiction in all actions, real, mixed, and personal, to any amount. There is a recorder of Plymouth, who is judge of the court (a) Rules were made for the court in 1832 The practice is generally similar to that of the Court of Common Pleas before 1852. Counsel and solicitors have audience as advocates The court has been in abeyance for many years (t)

The corporation have a court leet (a) and view of frankpledge (b).

(cxviii) *Pontefract*

**424** The Court Burgess and Foreign of Pontefract (c) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held every three weeks The recorder of Pontefract is the judge of the court (d) In 1834 a table of fees was in existence (e)

(cxix) *Poole*

**425** The Poole Court of Record (f) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held weekly The recorder is judge of the court (g) The practice and procedure is analogous to that of the superior courts of common law before 1852, except that the whole of the provisions of the Summary Procedure Bills of Exchange Act, 1855 (h), and of the schedule to the Borough and Local Courts of Record Act, 1872 (i), have been extended to the court There are rules and tables of fees etc in existence

the Crown Act, 1901 (1 Edw 7, c 5) See Gaches, Liberty of Peterborough, pp 51, 52

(r) This court is held under the authority of a charter of Henry VI Before the incorporation of Plymouth the court was held by the seneschal of the Prior of Plympton

(s) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134 *ante*

(t) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 579—584, and information kindly given by the town clerk.

(u) See p 215, *post*

(v) 4 Edw 4 (Britton and Brayley, Devon, Vol I, p 147)

(w) This court is held under the authority of a charter of Charles II (Pat Rol, 29 Car 2, No 7) This charter was surrendered, and a new charter in similar terms so far as regards the franchise of the court was granted (1 Jac 2) The court was first granted by a charter of 2 Ric 3

(x) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss. 175, 176 See p 134, *ante*

(y) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1673—1677

(z) This court is held under the authority of a charter of Queen Elizabeth (Pat Rol, 10 Eliz, Part II), granted 23rd June, 1568, and Charles II, granted 20th November, 1666, enrolled Pat Rol, 19 Car 2, Part IX, No. 10

(aa) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*.

(ab) 18 & 19 Vict, c 77, by Order in Council of 31st July, 1855 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 168)

(ac) 35 & 36 Vict c. 86, by Order in Council of 26th June, 1873 (*ibid*, p 169).

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Courts.**

The court is still held, but no plaints seem to have been entered since 1900 (*h*)

Poole being a county of itself, the sheriff has jurisdiction to hold his county court (*l*)

(cxx) *Portsmouth*

**Portsmouth**

**426** The Portsmouth Court of Record (*n*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. There is a recorder of Portsmouth, who is the judge of the court (*n*). The practice and procedure is similar to that of the superior courts of common law before 1852. Counsel and solicitors have audience in this court. Rules made in 1812 are in existence (*o*). The court has not been used for many years (*p*).

The corporation have also a court of pie poudie (*q*) and a court leet (*r*), to be held twice a year before the mayor (*s*).

(cxi) *Preston.*

**Preston.**

**427** The Preston Court of Record (*a*) has jurisdiction in personal actions to any amount. The court is directed to be held every three weeks, and is still in use. The recorder is the judge of the court (*b*). The practice and procedure is regulated by the Common Law Procedure Act, 1852 (*c*), certain provisions of which, and of the rules made thereunder, were extended to this court (*d*).

The charter also granted to the corporation a court of pie poudie (*e*) and a court leet (*f*) and view of frankpledge (*g*).

(*h*) Civil Judicial Statistics, 1901—1905. The corporation have also a court of admiralty (see p. 105, *ante*) with a silver cup as insignia.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp. 1319—1323, and information kindly given by the town clerk. The total costs recoverable shall not exceed £1 where the amount recovered is not more than £5, nor £1 10s where the amount recovered is above £5, but not more than £10, unless specially allowed by the judge.

(*m*) This court is held under the authority of a charter of Charles I (Pat. Rol., 3 Car. 1, Part XXX), granted 17th November, 1628.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 131 *ante*.

(*o*) Printed in Appendix to Rawlinson's Municipal Corporations Act, 4th ed.

(*p*) Civil Judicial Statistics, 1868—1905.

(*q*) See p. 136, *ante*.

(*r*) See p. 215, *post*.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp. 801—813, and information kindly given by the town clerk.

(*a*) This court is held under the authority of a charter of Charles II (1684).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 184, *ante*.

(*c*) 15 & 16 Vict. c. 76.

(*d*) By Order in Council of 18th September, 1854 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 170). For the history and jurisdiction of the court, see *Addison v Preston Corporation* (1852), 12 C. B. 108, and as to appeals, see *Darlou v Shuttleworth*, [1902] 1 K. B. 721.

(*e*) See p. 136, *ante*.

(*f*) See p. 215, *post*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1683—1691, and information kindly given by the town clerk.

(cxxx) *Ramsey (Huntingdonshire)*SECT. II.  
Particular  
Courts.

**428.** The Ramsey Court of Pleas (*h*). This court has jurisdiction in personal actions up to any amount. The judge of the court is appointed by Lord de Ramsey, and is paid by fees (*i*)

Ramsey.

(cxxxii) *Reading*

**429** The Reading Borough Court of Record (*k*) has jurisdiction in personal actions up to £10, which jurisdiction is increased to £20 (*l*), and also in ejectment up to £20, as there is a recorder of Reading, being a barrister of five years' standing who is judge of the court (*m*). Rules were made for the court in 1792 (*n*). By the charter the right of audience is restricted to four solicitors, to be admitted by the corporation.

Reading.

The corporation has also a court leet (*o*) and view of frankpledge as lords of the manor of Reading (*p*)

(cxxxiv) *Retford (East)*

**430** The Court of Record of East Retford (*q*) has jurisdiction in personal actions up to any amount. The court is directed to be held every three weeks. There is a recorder of East Retford, but as in 1835 there was a separate judge entitled the steward of the court, who was a barrister of five years' standing, the recorder is not *inute officio* the judge of the court (*r*). The practice and procedure are similar to those of the superior courts of common law before 1852. This court has practically been in abeyance since 1816 (*s*).

Retford  
(East)(cxxxv) *Richmond (Yorks)*

**431** The Richmond Court of Record (*t*) has jurisdiction in personal actions up to the amount of £100. The court is directed

Richmond  
(Yorks).

(*h*) A charter of Henry I, printed in Dugdale's *Monasticon Anglicanum* (ed 1846), Vol II, p 563, granted to the Benedictine Abbey of Ramsey the franchise of "sac and soc" (*i e*, of holding a free court). Under a charter of Henry VIII (Pat Rol, 31 Hen 8, Part IV, memb 11, dated 4th March, 1540) the house and site of the abbey of Ramsey were granted to Sir Richard Cromwell, together with all jurisdiction and courts thereof. This franchise is now vested in Lord de Ramsey as the successor, in title to Sir Richard Cromwell.

(*i*) Parliamentary Paper 1888 (C 187), lxxxii 169

(*k*) This court is held under the authority of a charter of Charles I (Close Roll 15 Jan 1, Part XI, No 23)

(*l*) Municipal Corporations Act, 1835 (5 & 6 Will 4, c 76), s 118. This jurisdiction is continued by the Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 163

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*n*) By Mr Dampier, afterwards Dampier, J

(*o*) See p 215, *post*

(*p*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 111—114

(*q*) This court is held under the authority of a charter of James I (Pat Rol, 5 Jan 1, Part XXVIII). The franchise was originally granted by Henry VI. in 1424

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss 175, 176. See p 134, *ante*.

(*s*) Only five plaintiffs were entered between 1816 and 1833 (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1861—1863)

(*t*) This court is held under the authority of a charter of Charles II (Pat.

SECT 5.  
Particular  
Courts

to be held every fortnight There is a recorder of Richmond, who is consequently judge of the court(*a*) The court fell into abeyance on the establishment of county courts in 1846, and the last court was held in 1849

The charter also grants a court leet(*b*) and view of frankpledge, to be held before the mayor and aldermen (*c*), and a court of pie poudrie (*d*)

(CXXVI) *Ripon*

Ripon.

**432** The Ripon Court of Record(*e*) has jurisdiction in mixed and personal actions up to the amount of £50 The charter of James I directed the court to be held every fortnight, but the charter of James II directed the court to be held once in every March The mayor (and the recorder or his deputy) are the judges of the court There is now no recorder of Ripon(*f*) This court fell into abeyance long before 1835

The corporation have also a court of pie poudrie (*g*), held before the mayor (*h*)

The Dean and Chapter of Ripon have a court of pleas called the Canon Fee Court(*i*)

In 1811 there existed a court military for the recovery of debts to any amount, the officers of which were appointed by the Lord Lieutenant of the West Riding This court had jurisdiction over the borough and liberty of Ripon (*k*)

(CXXVII) *Rochester*

Rochester.

**433** The Rochester Court of Portmote(*l*) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held from fifteen days to fifteen days The recorder of Rochester is judge of the court(*m*) There appears to have

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Pat. Rol., 20 Car. 2, Part 1, No. 5) The jurisdiction was originally granted by a charter of 19 Eliz

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176 See p. 134, *ante*

(*b*) See p. 215, *post*

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1697—1703, and information kindly given by the town clerk

(*d*) See p. 136, *ante*

(*e*) This court is held under the authority of a charter of James I and James II (Pat. Rol., 2 Jac. 1, Part XVII., 2 Jac. 2, not enrolled on Pat. Rol.)

(*f*) There was a recorder of Ripon at the time of the passing of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76)

(*g*) See p. 136, *ante*

(*h*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1707—1710 The Archbishop of York had a civil court at Ripon, with jurisdiction in personal actions to any amount The judge was the steward learned of the Archbishop This court was abolished by the Liberties Act, 1836 (6 & 7 Will. 4, c. 87), s. 1

(*i*) 22nd July, 1604

(*k*) Including the parishes of Ripon and Nidd-with-Killinghall (Lewis, Topographical Dictionary, Vol. III, p. 646)

(*l*) This court is held under the authority of a charter of Charles I (Pat. Rol., 5 Car. 1, Part XVII., No. 6), granted 7th August, 1629 The jurisdiction was originally granted by a charter dated 6th November in the twelfth year of Henry II or III.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176 See p. 134, *ante*



been no settled practice and procedure, and the court has been in abeyance since 1835 (*n*)

SECT. 5.  
Particular  
Courts.

The charter also granted a court of pie poudre (*o*), which has not been held since 1810 (*p*)

The corporation as lord of the manor have a court leet (*q*), to be held once a year There is also another court leet held in the open air on Boley Hill, a place within the city (*r*).

(cxxxviii) *Romsey*

**434** The Romsey Court of Record (*s*) has jurisdiction in mixed and personal actions up to the amount of £40 The court is directed to be held weekly before the mayor (the recorder or his deputy), and the aldermen or any two of them, of whom the mayor must be one There is no recorder of the borough The practice and procedure of the court is similar to that of the superior courts of common law before 1852

Romsey.

The charter also granted a court of pie poudre (*t*), which was in abeyance in 1835 (*u*)

(cxxxix) *Ruthin*

**435** The court of the lordship of Ruthin (*b*) has jurisdiction in personal actions up to any amount The court is directed to be held every fortnight before the steward of the lordship, but the court fell into abeyance about 1835

Ruthin.

There is also a court leet (*c*) and view of frankpledge, held before the steward of the lordship (*d*)

(cxxx) *Rye*

**436** The Rye Court of Record (*e*) has jurisdiction in all actions, real, mixed, and personal, up to any amount The court is directed to be held at the accustomed times, that is to say every alternate

Rye.

(*n*) Information kindly given by the town clerk

(*o*) See p 136, *ante*

(*p*) Under a charter of Edward IV, granted 14th December, the corporation of Rochester have the grant of a court of Admiralty See p 10, *ante* This court has a jurisdiction in respect of the oyster fishery and the free diedgers

(*q*) See p 215, *post*

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 843—857

(*s*) This Court is held under the authority of a charter of William III (Pat. Rol., 10 Will 3, Part VIII, No 1)

(*t*) See p 136, *ante*

(*u*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1331, 1332

(*b*) This Court is held under a grant of the Lordship of Ruthin by Charles I. (Pat. Rol., 10 Car 1, Part XXXV)

(*c*) See p 215, *post*

(*d*) This court dates back at least to 1245 A.D. (Appendix to Report of the Municipal Corporations Commissioners 1835, Part IV, pp 2847—2851)

(*e*) This Court is held under the authority of the charter of the Cinque Ports granted by Charles II, 23rd December, 1668, printed in Jeake, *Charters of the Cinque Ports*, p 120 This charter contains *insuperimus* and confirmation of previous charters of 1 Eliz (granted 8th March, 1559) and 43 Eliz (26th January, 1601) The corporation claims to hold all its franchises by prescription.

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Particular  
Courts**

**Wednesday** There is a recorder of Rye, who is judge of the court (/), which has been in abeyance since 1791.

Under the charter the barons have a court leet (g).

(cxxx) *St Albans.*

**St Albans.**

**437** The St Albans Court of Record (h) has jurisdiction in mixed and personal actions up to the amount of £50 The court is directed to be held every week before the mayor and aldermen, of whom the mayor must be one, or in their absence before two of the senior aldermen The charter directs that the mayor and aldermen (the mayor being one) shall elect three or four discreet freemen to be attorneys of the court This court has been in abeyance since 1789

There is a court of pie poudre (i), which was totally disused in 1834 The corporation have also a court leet (k) and view of frankpledge There is also an annual court of the Clerk of the Markets (l), to be held before the mayor, for the inspection of weights and measures within the borough (m).

(cxxxii) *St Ives (Cornwall)*

**St Ives  
(Cornwall)**

**438** The corporation of St Ives have a Court of Record (n), which had been in abeyance for many years in 1834, and no records of it are in existence (o)

There is also a court leet (p) for the manor of Luddenham, the privilege of which is claimed by the borough of St Ives by prescription and tenure (q)

(cxxxiii) *Saffron Walden*

**Saffron  
Walden.**

**439** The Saffron Walden Court of Pleas (r) has jurisdiction in personal actions up to any amount The court is directed to be held every three weeks The recorder is judge of the court (s)

(f) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss 175, 176 See p 134, *ante*

(g) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1031, 1035

(h) This court is held under the authority of a charter of Charles II, (cls 40—42), granted 27th July, 1664 This charter increased the jurisdiction from £38 to £50 The jurisdiction was originally granted by a charter of 7 Edw 6, dated 12th May, 1554

(i) See p 136, *ante*

(k) See p 215, *post*

(l) See p 137, *ante*

(m) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2918—2926, and information kindly given by the town clerk.

(n) This court is held under the authority of a charter of James II, granted 28th May, 1685 This charter is not enrolled. The borough was first incorporated in 1639 by a charter of Charles I, which granted this court to the corporation etc.

(o) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 619, 620

(p) See p. 215, *post*

(q) Gilbert, History of Cornwall, Vol II, p 258. According to this authority the court was confirmed to the borough by the above-mentioned charters

(r) This court is held under the authority of a charter of William and Mary (Pat. Rol., 6 Will & Mar., Part VIII, No 1)

(s) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss 175, 176.

SECT. 5  
Particular  
Courts.

The jurisdiction is extended to actions of ejectment where the rent of the premises sought to be recovered does not exceed £20, and there is no fine (t) The court has long been in abeyance, and nothing appears to be known of its practice and procedure

The charter also grants to the corporation a court of pie poudre (u).

(cxxxiv) *Salford Hundred*

**440.** The present Court of Record for the Hundred of Salford, in the county of Lancaster, was constituted in 1868 (1) by the amalgamation of two then existing courts, namely, the ancient Salford Hundred Court (v) and the Manchester Court of Record (z).

Salford  
Hundred.

**441.** The jurisdiction of the court is fixed by the Act of Parliament (a) constituting the court as follows — Jurisdiction.

Personal actions (except actions for malicious prosecution), if the cause of action arise within the hundred (b), in which the debt or

(t) Municipal Corporations Acts, 1835 (5 & 6 Will 4, c 76), s 118, and 1882 (45 & 46 Vict c 50), s 183

(u) See p 136, *ante*

(v) By Salford Hundred Court of Record Act, 1868 (31 & 32 Vict c cxxx), which Act, after reciting that the Court of Record for the Hundred of Salford and the Court of Record for the Trial of Civil Actions within the City of Manchester had been found of great utility, and that their utility would be greatly increased by the amalgamation of the two courts and by the extension of the powers theretofore possessed by them, enacted that the two courts should be amalgamated, and the amalgamated court should be called 'The Court of Record for the Hundred of Salford, in the County of Lancaster.' It also recited that the Right Honourable William Philip, Earl of Sefton, and his ancestors had long held, enjoyed, and exercised the dignity and office of steward for the hundred or wapentake of Salford, in the County Palatine of Lancaster, and further enacted that Her Majesty's steward for the time being of the hundred or wapentake of Salford should be the high steward of the amalgamated court

(w) See *Hallet v Burt* (1697), 5 Mod Rep 254 The Salford Hundred Court was one of the ancient Anglo-Saxon hundred courts, probably one of the oldest. Each hundred had its court, or "wapentac," "wapentake," "wapontake," so styled because the judge and suitors attended armed with their weapons (see also note (m), p 214, *post*) The hundred of Salford was also called in course of time the "Wapentake of Salfordshire." The jurisdiction of the court was unlimited in amount until the reign of Edward I, when by the statute of Gloucester (1278) its jurisdiction was reduced to 40s, equivalent to about £40 or £50 of our money now That continued to be the extent of its jurisdiction until by 9 & 10 Vict c cxxvii (1846) it was raised to £50 over all the hundred except the borough of Manchester, and the court was constituted a "court of record for the hundred or wapentake of Salford, in the county of Lancaster"

(x) In 1839, by royal charter expressed in letters patent under the Great Seal of the United Kingdom, the right had been granted to the mayor, aldermen, and burgesses of the borough of Manchester to hold within the borough a court of record for the trial of civil actions before the mayor of the borough, and in 1853, by certain other letters patent under the Great Seal of the United Kingdom, the borough of Manchester was constituted the city of Manchester, and the mayor, aldermen, and burgesses of the borough of Manchester a body politic and corporate by the name and style of "The Mayor, Aldermen, and Citizens of Manchester, in the County of Lancaster," and by other Acts of Parliament, and particularly by the Manchester Court of Record Procedure Act, 1864 (17 & 18 Vict. c 84), the powers and jurisdiction of the Court of Record of the City of Manchester were extended, and its practice and procedure simplified and otherwise improved

(a) The Salford Hundred Court of Record Act, 1868 (31 & 32 Vict c cxxx)

(b) *Ibid.*, s 6, *Whitehead v Butt* (1891), 7 T L R. 609, *Payne v Hogg* [1900],

**SECT. 5.  
Particular  
Courts**

**Salford  
Hundred**

whole damage does not exceed £50, actions of ejectment between landlord and tenant, provided the land possession of which is sought to be recovered is situate in the hundred, and the annual rent or value does not exceed £50, and no fine shall have been paid, reserved, or made payable, any action whatever (except actions for libel, slander, or for debauching the plaintiff's daughter or servant) when more than £50 is sought to be recovered, provided consent by both parties shall have been filed. The jurisdiction, however, has been cut down by being excluded in all cases within the boroughs of Oldham and Bury, and part of the borough of Bacup, in which the county court has jurisdiction (c) and in cases under £5 within the borough of Bolton in which the county court has jurisdiction (d), and in cases under £5 within the borough of Heywood in which the county court has jurisdiction (e), and in the like causes within the borough of Rochdale (f), and in cases under £10 within the borough of Middleton (g). The practice and procedure of the court is regulated by the Common Law Procedure Acts, 1852 (h) and 1854 (i). The provisions of the Summary Procedure Bills of Exchange Act, 1855 (k), have also been extended to this court (l).

If on the trial of an issue the judge grants leave, a rule to set aside a verdict or nonsuit and to enter a verdict, or to enter a nonsuit, or to arrest the judgment, or for judgment *non obstante verdicto*, may be moved before the King's Bench Division (m). All powers, authorities, jurisdictions, and privileges of inferior courts of record of which a barrister of five years' standing is the judge are granted to and vested in the Salford Hundred Court (n).

2 Q. B. 43, C. A. The limits of the hundred are set out in s. 5 of the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx) the hundred of Salford containing the following parishes: Bolton-le-Moors, Bury, Dean, Radcliffe, Wigan (township of Aspull only), Eccles, Flixton, Manchester, Prestwich-cum-Oldham, Ashton-under-Lyne, Middleton, and Rochdale, the borough of Salford, Stretford and Withington, which last is now part of the city of Manchester.

(c) By Order in Council 30th December, 1878 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 176), and the Oldham Corporation Act, 1886, s. 45, and the Bury Corporation Act, 1906, s. 6. As to Bacup, see Statutory Rules and Orders, 1909, No. 551, L. 19.

(d) By Order in Council 16th August, 1886 (*ibid.*, p. 179).

(e) By Order in Council 15th March, 1893 (*ibid.*, p. 182).

(f) By Order in Council 15th March, 1893 (*ibid.*, p. 181).

(g) By Order in Council, 28th July, 1906. As to objection to the jurisdiction, see *ibid.*, s. 7, (*Chadwick v. Bull* (1885), 14 Q. B. D. 555, C. A., overruling *Oram v. Brearey* (1877), 2 Ex. D. 346, *Payne v. Hogg*, [1900] 2 Q. B. 43, C. A.).

(h) 15 & 16 Vict. c. 76. The whole of this Act except ss. 1, 3, 9, 10, 18, 19, 21—24, 82, 97, 98, 100—116, 120—122, 146—167, 173, 182, 188, 189, 202, 217, 219, 220, 223—236, was extended to this court by Order in Council 28th February 1855 (Statutory Rules and Orders Revised, Vol. I, Inferior Court, England, p. 171).

(i) 17 & 18 Vict. c. 125. The whole of this Act, with the rules thereunder, except ss. 2, 17, 75—77, 95, 97—105, and 107, was extended to this court by Order in Council 4th April, 1856 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 174).

(k) 18 & 19 Vict. c. 67.

(l) By Order in Council 4th April, 1856 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 175), and s. 117 of the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx).

(m) Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx), s. 89.

(n) *Ibid.*, s. 116.

SECT. 5.  
Particular  
Courts

The judge  
etc

**442** The offices of the court are in the city of Manchester. The number of writs in the year average about 16,000, and the judge (who is appointed by the Lord Chancellor and must be a barrister-at-law of at least ten years' standing (o)) holds a court six times a year at the Manchester Assize Court for the trial of civil actions. The jury are twelve in number, and as the court has power to try certain actions which cannot be tried in the county courts, and as most of the cases tried are jury cases, which, in the densely populated district over which the court's jurisdiction extends, the local county courts could not conveniently try owing to the large amount of other county court work they have to cope with, the utility of the Salford Hundred Court of Record is as great as was contemplated by the legislature when the amalgamated court was constituted in 1868 (p).

The judge has power to hear applications for rules to show cause in arrest of judgment, or for judgment *non obstante iudicto*, or for repleader, or for a new trial, or for entering verdicts or nonsuits pending in the court within twenty-one days after trial, and whether the court be sitting or not, either within or without the hundred (q).

The officers of the court are the registrar and the head bailiff, together with clerks and criers (r).

There is a table of court fees dated 6th May, 1895. There are three scales, one for claims not exceeding £5, one for claims not exceeding £20, and the other for claims exceeding £20.

(cxxxv) *Salisbury*

**443** By prescription the Bishop of Salisbury has a civil court in that city. The court has jurisdiction in mixed and personal actions up to any amount. It is doubtful whether the jurisdiction extended over the close as well as over the city, but since 1835 the jurisdiction extends over the whole of the borough (s). There is a recorder of Salisbury, who is, it would seem, judge of the court (t). The practice was similar to that of the Court of King's Bench before 1852. There was formerly a book of the practice of the court, but it had been lost before 1834. The costs are stated to be the same as those in the Court of Common Pleas before 1852. The court has been in abeyance since 1846, and no trial has taken place since 1816. The officer of the court is called the prothonotary,

Salisbury

(o) Salford Hundred Court of Record Act (31 & 32 Vict c cxxx), s 14. The judge may in case of his illness or unavoidable absence appoint in writing a deputy judge, being a barrister-at-law of five years' standing (*ibid*, s 17).

(p) This account of the Salford Hundred Court of Record was kindly supplied by the late H. G. Shore, Esq., K.C., who was then the judge of the court.

(q) Salford Hundred Court of Record Act, 1868 (31 & 32 Vict c cxxx), s 20.

(r) *Ibid*, s 22. Where a clerk employed in the office of the court directed an interpleader issue to be tried before himself, it was held that a party who was ignorant of the clerk's want of jurisdiction was not bound by the proceedings (*Nathan v Bottomley* (1903), 19 T. L. R. 421).

(s) Municipal Corporations Acts, 1835 (5 & 6 Will. 4, c. 76), s 118, and 1882 (45 & 46 Vict. c. 50), s 183.

(t) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss 175, 176. See definition of "borough civil court" in s 7 (1). The judge of the court was formerly the bishop's bailiff.

SECT 5.  
Particular  
Courts

and is appointed by the bishop The bishop has also a court leet (*a*) and view of frankpledge (*b*)

(cxxxv) *Sandwich*

Sandwich.

**444** The Sandwich Court of Record (*c*) has jurisdiction in all actions, real, mixed, and personal, up to any amount The court is directed by the Cinque Ports charter to be held on the accustomed days, that is every three weeks There is a recorder of Sandwich, who is judge of the court (*d*) The costs allowed were the same as those in the Court of King's Bench before 1852. The court has been in abeyance for many years (*e*).

(cxxxvii) *Scarborough*

Scarborough.

**445.** The Scarborough Court of Pleas (*f*) has jurisdiction in mixed and personal actions up to any amount The court is directed to be held every month The recorder is judge of the court (*g*). The practice is regulated by the Common Law Procedure Acts, 1852 (*h*), 1854 (*i*), and 1860 (*h*), and the rules made thereunder All the provisions of the schedule to the Borough and Local Courts of Record Act, 1872 (*i*), have also been extended to this court (*m*) There are no special rules This court is still in use (*n*). The

(*a*) See p 215, *post*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1337—1344

(*c*) The corporation of Sandwich have a charter dated 13th October, 11 Car 2 This charter is supposed to have been renounced after the Revolution The present practice of the corporation is understood to be in accordance with immemorial usage The court of record is claimed by the corporation to be a franchise by prescription The general charter of the Cinque Ports granted by Charles II, 23rd December, 1668 (printed in Jeake, Charters of the Cinque Ports, 120), also contains a grant to the corporation of Sandwich of a court of record This charter contains *insperimus* and confirmation of previous charters of 1 Eliz (granted 8th March, 1559) and 43 Eliz (granted 26th January, 1601)

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1043—1050

(*f*) This court is held under the authority of a charter of Edward III, granted 22nd November, 1356, inspected, exemplified, and confirmed by 8 Car 1, granted 4th May, 1632

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(*h*) 15 & 16 Vict c 76

(*i*) 17 & 18 Vict c 125 The whole of the provisions of the Common Law Procedure Acts, 1852 and 1854, and the rules thereunder, were extended to this court by Order in Council of 6th June, 1859 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 187)

(*k*) 23 & 24 Vict c 126 All the provisions of this Act and the rules thereunder were extended to this court by Order in Council of 6th January, 1862 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p 188).

(*l*) 35 & 36 Vict c 86

(*m*) By Order in Council of 26th June, 1873 (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p 189)

(*n*) Fourteen actions were pending or commenced in 1905 No trial, however, took place in that year (Civil Judicial Statistics, 1905, Parliamentary Paper, 1907 [C. 3477], p. 165).

° PART XVII.—BOROUGH AND LOCAL COURTS OF RECORD.

corporation are lords of the manor of Scarborough and Falsgrave. The bailiffs hold the usual manor courts (o).

SECT 5.  
Particular  
Courts.

(cxxxviii) *Shaftesbury*.

**446.** The Shaftesbury Court of Record (p) has jurisdiction in personal actions to the extent of £10 debt or damages. The court is directed to be held weekly before the mayor and capital burgesses or three of them, of whom the mayor or the ex-mayor must be one. There is no recorder of Shaftesbury. The practice of the court is almost exactly similar to that of the superior courts of common law before 1852. The court has practically been in abeyance since the end of the eighteenth century, and was discontinued in 1842 on account of expense. In 1834 a table of fees and of solicitors' costs was in existence.

Shaftesbury.

The corporation have also a court leet (q) and view of frankpledge (r).

(cxxxix) *Shrewsbury*.

**447** The Shrewsbury Court of Record (s) has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is directed to be held every week. There is a recorder of Shrewsbury, who is consequently judge of the court (t). The practice is similar to that of the superior courts of common law before 1852. The last court was held in 1879.

Shrewsbury.

The corporation have also a court leet (a) and view of frankpledge (b) as well as (c) a court of pie poudre (d).

(cxl) *Southampton*.

**448** The Southampton Court of Record or Court of Pleas (e), also called the common court of the town, has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is directed to be held weekly for personal actions, and once a fortnight for pleas of land. The recorder is the judge (f). There are no

Southampton.

(o) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 1713—1721, and information kindly given by the town clerk. See p 215, *post*.

(p) This court is held under the authority of a charter of Charles II (Pat. Rol, 17 Car 2, Part II, No 19).

(q) See p 215, *post*.

(r) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1351—1354, and information kindly given by the town clerk.

(s) 14 Car 1, Pat Rol, Part XI, No 3.

(t) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss. 175, 176. See p 134, *ante*.

(a) See p 215, *post*.

(b) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 2011—2017, and information kindly given by the town clerk.

(c) Selden Society, Vol. XXIII, p xv.

(d) See p 136, *ante*.

(e) 16 Car 1, Pat Rol, Part XX, No 7, 12th June, 1640. The jurisdiction was originally conferred by charter of 2 Hen. 4 (Wilks, Hampshire, Vol. II, p. 313).

(f) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss. 175, 176. See p. 134, *ante*.

**SECT. 5**  
**Particular**  
**Courts**

written or printed rules of practice, but the practice is similar to that of the superior courts of common law before 1852

The mayor, recorder, bailiffs, aldermen, and sheriff (the mayor, recorder, or senior alderman to be one) are also authorised to hold a court for the government of the orphans of burgesses and inhabitants (*g*).

The corporation (*h*) also possesses a court of pie poudre (*s*) and a court leet (*k*) and view of frankpledge

(cxli) *South Molton*

**South Molton** **449** Under charters of Queen Elizabeth (*l*) and Charles II. (*m*) the South Molton Court of Record has jurisdiction in personal actions up to £50 The court is directed to be held from three weeks to three weeks There is a recorder of South Molton, who is consequently judge of the court (*n*) This court has been in abeyance for many years (*o*)

(cxlii) *Southwark*.

**Southwark.** **450** The corporation of London under the charters granting to them the town and borough of Southwark have a court entitled "The Court of Record of the Liberty of the Mayor and Commonalty and Citizens of the City of London of then Town and Borough of Southwark" (*p*) This court has jurisdiction in personal actions to any amount arising within the borough of Southwark, or the King's manor of Southwark, or the Guildable Manor, or the Great Liberty Manor The former liberty of the Clink is excluded from the jurisdiction The provisions of the Municipal Corporations Act, 1882 (*q*), do not apply to Southwark The court is to be held every week before the Steward of Southwark or his deputy The stewardship of Southwark is an office held by the Recorder of London The procedure is similar to that of the superior courts of common law before 1852 This court has been in abeyance for some years

(*g*) This court is held under the authority of the charter of Charles I (see note (*e*) on p 201, *ante*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 871—884

(*h*) Under a charter of Edward IV (Rot Cart, 1 Edw 4, Part II, No 11) The charter of Charles I (see note (*e*) on p 201, *ante*) recites and confirms a charter of Henry VI (30 Hen 6, Rot Cart, 27-39 Hen 6, No 27, 12th October, 1431), which contains the grant of a court of admiralty (see p 105, *ante*) to the corporation of Southampton The mayor has a silver oar as insignia and is entitled to receive the first call from the commanding officer of foreign ships of war visiting the port

(*s*) See p 136, *ante*

(*k*) See p 215, *post*

(*l*) Pat Rol, 32 Eliz, Part XXII, granted 9th May, 1590

(*m*) 36 Car 2, granted 24th December, 1684 This charter increased the jurisdiction from £40 to £50

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 613, 614

(*p*) 1 Edw 3 (8th March, 1327) (Maitland, History of London, p 122), 2 Edw 4 (9th November, 1462) (*ibid*, p 116, ed 1739), 4 Edw. 6 (23rd April, 1500) (*ibid*, p 144)

(*q*) 45 & 46 Vict c. 50



## PART XVII.—BOROUGH AND LOCAL COURTS OF RECORD.

SECT. 4.  
Particular  
Courts

The corporation had a court of pie poudre (r), but this is now obsolete.

The charters also grant courts leet (s) and views of frankpledge to the corporation, which should be held separately for the three manors before mentioned (t)

Quarter sessions for the borough of Southwark are still held. The judges of the court are the lord mayor, the aldermen who have passed the chair, and the recorder, of whom the lord mayor or in his absence an alderman who has passed the chair, two other aldermen who have passed the chair, and the recorder must be present. The proceedings are now purely formal (a).

(cxliii) *Southwold*.

**451** The Southwold Court of Record (b) has jurisdiction in all Southwold. actions, real, mixed, and personal, to any amount The court is directed to be held weekly before the bailiffs and the chief steward or his deputy, but fell into abeyance about the middle of the eighteenth century (c)

The corporation have also a grant of a court of admiralty (d), and there is a court leet (e), held once a year before the bailiffs and the chief steward (f)

(cxliv) *Stafford*

**452.** The Stafford Court of Record (g) has jurisdiction in actions Stafford. of debt and trespass up to any amount The court is directed to be held before the mayor or his deputy (the recorder or deputy recorder), and the aldermen or any two of them, the recorder or deputy recorder being one There is now no recorder of Stafford is court had been in abeyance for fifty or sixty years in 1834

The corporation have also a court leet (h) and view of frankpledge (i)

(cxlv) *Stamford*

**453** The Stamford Court of Record (k) has jurisdiction in personal Stamford. actions up to £40 The court is directed to be held weekly There

(r) See p 136, *ante*

(s) See p 215, *post*

(t) Appendix to Report of the Municipal Corporations Commissioners, 1837 (London and Southwark), Parliamentary Paper, 1837 (60), pp 3, 18, 19, 20, 132 Information kindly given by the high bailiff

(a) Royal Commission, 1893, Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London, pp 76, 77

(b) This court is held under the authority of a charter of William and Mary, granted 23rd January, 1690 This charter confirms an earlier charter of 20 Hen 7, granted 10th June, 1505, which gave these franchises to the corporation

(c) Books of records of this court from 1675 to 1758 are in existence.

(d) See p. 105, *ante*.

(e) See p 215, *post*

(f) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2513—2518 Information kindly given by the town clerk

(g) This court is held under the authority of a charter of George IV (Pat. Rol., 8 Geo 4, Part XI, No 11)

(h) See p 215, *post*

(i) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 2025—2027

(k) This court is held under the authority of a charter of Charles II.

**SMOKE.  
Particular  
Courts**

is a recorder of Stamford, who is consequently judge of the court (*l*). The practice and procedure are as in the superior courts of common law before 1852. Costs are regulated by a table fixed in 1741 (*m*).

(cxlvi) *Stannaries Court*

**Stannaries  
Court.**

**454** The Court of the Stannaries of Cornwall and Devon originated by virtue of a privilege granted to the workers in the tin mines in those counties to sue and be sued only in their own courts (*n*). The courts, which were courts of record, were originally distinct for the several stannaries, but in 1836 were amalgamated into one Court of the Vice-Warden for all the Stannaries (*o*). Until the establishment of the modern county courts the tin-workers could not be sued except in the Stannaries Court in respect of matters arising within the stannaries, but after that event the county court of the district had a concurrent jurisdiction (*p*).

The Lord Warden of the Stannaries was appointed by the Duke of Cornwall, and he appointed a Vice-Warden before whom the court was held. An appeal lay from the Vice-Warden to the Lord Warden, but by the Judicature Act, 1873, all the judicial jurisdiction and powers of the Lord Warden were transferred to the Court of Appeal (*q*), and as from the 1st January, 1897, the Court of the Vice-Warden of the Stannaries ceased to exist, except as to then pending proceedings, and all the jurisdiction and powers of the court were vested in such of the county courts as the Lord Chancellor might by order direct (*r*). The county courts of Cornwall were appointed the courts to exercise the transferred jurisdiction and powers (*s*), and rules have been made for the purpose of regulating the procedure in cases brought under the stannaries jurisdiction (*t*).

(cxlvii) *Stockport*

**Stockport.**

**455.** The Stockport (*a*) Court of Portemanimote has jurisdiction in actions of debt and battery, and of wounding without shedding of blood

(Pat. Rol., 16 Car. 2, Part II, No. 14), granted 19th February, 1664. A charter, 1 Jac. 2, 3rd March, 1685, is said to be the governing charter. Its terms as to the court are the same as those of the charter of Charles II. It does not seem to have been enrolled.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp. 2527—2533.

(*n*) See 4 Co. Inst. 232, 3 Bl. Com. 80; stat. (1640) 16 Car. 1, c. 15.

(*o*) Stannaries Act, 1836 (6 & 7 Will. 4, c. 106), as amended by the Stannaries Act, 1839 (2 & 3 Vict. c. 58).

(*p*) County Courts Act, 1846 (9 & 10 Vict. c. 95), s. 141.

(*q*) 36 & 37 Vict. c. 66, s. 18, and see *Re West Devon Great Consols Mine* (1884), 27 Ch. D. 106.

(*r*) Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), s. 1. See title **COUNTY COURTS**, Vol. VIII, p. 686.

(*s*) Order dated 16th December, 1896.

(*t*) See County Courts (Stannaries Jurisdiction) Rules, 1897, now merged in the County Court Rules, Ord. 51, rr. 1—28. For the jurisdiction as to companies, see title **COMPANIES**, Vol. V, and for the jurisdiction as to special mining usages and rights, see title **MINES, MINERALS AND QUARRIES**.

(*a*) This court is held under the authority of a charter granted by Robert de

## PART XVII.—BOROUGH AND LOCAL COURTS OF RECORD.

There is also a court leet (b) and view of frankpledge, and a court baron (c), held twice a year (d).

Sec. 3.  
Particular  
Courts.

(cxlviii) *Stratford-on-Avon.*

**456.** The Stratford-on-Avon Court of Record (e) has jurisdiction in personal actions up to the amount of £40. The court was directed to be held weekly before the mayor and the steward of the court of record, but had fallen into abeyance some considerable time before 1888 (f).

Stratford on  
Avon.

(cxlix) *Sudbury*

**457.** The Sudbury Court of Record (g) has jurisdiction in personal actions up to the amount of £20. There is a recorder of Sudbury (h), who is the judge of the court, which has long been in abeyance, and nothing appears to be known of its practice and procedure.

Sudbury.

(cl) *Swansea*

**458.** The corporation of Swansea claim to be a corporation by prescription, and that they have never accepted or acted on their charters (i), and that they have a prescriptive court of record or court of pleas with jurisdiction in all actions, real, mixed, and personal, to any amount. There is a recorder of Swansea, who is judge of the court (k). Solicitors have audience. The practice and procedure are by writ of summons, declaration and plea, or judgment in default and trial.

Swansea.

The corporation have a court of pie poudre (l) either by prescription or under a charter of James I (m). There is also a court baron (n).

**Stockport.** This charter grants that Stockport shall be a free borough "*secundum cartam quam impetravi a domino Cestr*". It is not dated, but from the names of the witnesses it appears to have been granted between 1208 and 1226. A translation of this charter is printed in *Earwaker, History of East Cheshire*, Vol. I., p. 334.

(b) See p. 215, *post*

(c) See p. 216, *post*

(d) Report on Certain Boroughs, by T J Hogg, Parliamentary Paper, 1838 (686), p. 127

(e) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part II., No. 6)

(f) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 119, 120

(g) This court is held under the authority of a charter of Charles II. (16 Car. 2, Pat. Rol., Part XIII., No. 1).

(h) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 118, and 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(i) A charter of Oliver Cromwell, dated 20th February, 1655, grants a court of record to be held twice a week, with jurisdiction in all actions, real, mixed, and personal, to any amount. A charter of 1 Jac. 2, granted 28th March, 1685, grants a court of record to be held weekly with jurisdiction in all causes not exceeding £40 in amount.

(k) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(l) See p. 136, *ante*

(m) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 383—393; and information kindly given by the town clerk.

(n) See p. 216, *post*.

SMOZ. &  
Particular  
Courts  
Tamworth

(ch.) *Tamworth*

**459.** The Tamworth Court of Record (*o*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held before the bailiffs, the steward, the recorder and the town clerk, or any two of them, of whom one of the bailiffs must be one. The town clerk is the prothonotary of the court. There is now no recorder of Tamworth (*p*). The court had long been in abeyance in 1834.

There was a court of pie poudre (*q*), and the corporation have a court leet (*r*) and court baron (*s*) under their charter (*t*).

(ch.) *Tenby*

Tenby.

**460** The Tenby Court of Record, or Mayor's Court (*u*), has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every four weeks before the mayor or his deputy, it was also held every fortnight for the recovery of debts under 40*s*. The practice was similar to that of the Court of Common Pleas before 1852, there was also a custom to compel appearance by *distringas*. The court has been in abeyance since the introduction of county courts in 1846.

The corporation have also a hundred court with view of frankpledge to be held twice yearly (*v*).

(ch.) *Tenterden*

Tenterden

**461** The Court of Record of Tenterden (*w*) has jurisdiction in all actions, real, mixed, and personal, to any amount. Under the charter of Elizabeth the court is directed to be held every fortnight. There seems to be no very settled form of procedure. There is a recorder of Tenterden, who is consequently judge of the court (*x*). The charter authorises the mayor and jurats to hold a court leet (*y*) and view of frankpledge twice a year (*a*).

(*o*) This court is held under the authority of a charter of Charles II (Pat. Rol., 16 Car 2, Part IX, No 8).

(*p*) There was a recorder of Tamworth at the time of the passing of the Municipal Corporations Act, 1835 (5 & 6 Will 4, c. 76).

(*q*) See p 134, *ante*.

(*q*) See p 136, *post*.

(*r*) See p 215, *post*.

(*s*) See p 216, *post*.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 2039, 2040, and information kindly given by the town clerk.

(*u*) This court is held under the authority of a charter of Henry IV (Pat. Rol., 3 Hen 4, memb 2), granted 22nd August, 1402. This charter is an *inquisitum* and confirmation of letters patent dated 6th February, 1 Ric II., which inspected and confirmed earlier charters beginning with one of William de Valencia, Earl of Pembroke (1265-1296).

(*v*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 401-409.

(*w*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 42 Eliz., Part IX), and of the general charter of the Cinque Ports granted by Charles II on 23rd December, 1668 (printed in Jeake, Charters of the Cinque Ports).

(*x*) Municipal Corporations Act, 1832 (45 & 46 Vict. c. 50), ss. 175, 176. See p 134, *ante*.

(*y*) See p. 215, *post*.

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp 1062-1067.

## PART XVII.—BOROUGH AND LOCAL COURTS OF RECORD.

(cliv.) *Tewkesbury*

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Particular  
Courts.

*Tewkesbury*

**462** The Tewkesbury Court of Record (*b*) has jurisdiction in personal actions up to the amount of £50 The court is directed to be held weekly The recorder of Tewkesbury is judge of the court (*c*). If the defendant does not appear to the writ of summons the plaintiff may enter an appearance for him In general the proceedings are as at common law before 1852 This court fell into abeyance about 1835

The corporation have also a court leet (*d*), to be held once a year (*e*)

(clv.) *Thetford*

*Thetford.*

**463.** The Thetford Court of Record (*f*) has jurisdiction in mixed and personal actions up to the amount of £50 The court is directed to be held weekly The recorder of Thetford is judge of the court (*g*) The practice and procedure is similar to that of the superior courts of common law before 1852 This court fell into abeyance about 1780, but about 1830 a mandamus issued to the corporation and recorder to hold the court, which was done for some years, after which it again fell into abeyance (*h*)

(clvi.) *Tiverton*

*Tiverton*

**464** The Tiverton Court of Record (*i*) has jurisdiction in personal actions up to the amount of £100 The court is directed to be held from fourteen days to fourteen days There is a recorder of Tiverton, who is consequently judge of the court (*k*) The practice and procedure is similar to that of the Court of Common Pleas before 1852 A book of rules of the court was in existence in 1833 A table of fees is also in existence made before 1838 The court has been in abeyance since 1834

The Court of the Hundred, Manor, and Borough of Tiverton has also jurisdiction within the borough (*l*)

(clvii.) *Great Torrington*

*Great  
Torrington.*

**465** The Torrington Court of Record (*m*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £50 The

(*b*) This court is held under the authority of a charter of William III (Pat Rol, 10 Will 3, Part II, No 1)

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(*d*) See p 215, *post*

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 125, 126, and information kindly given by the town clerk

(*f*) This court is held under the authority of a charter of William and Mary (1693)

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(*h*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp 2541—2544

(*i*) 11 Geo 1, Pat. Rol, Part II, No 31, granted 4th December, 1737

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), ss 175, 176 See p 134, *ante*

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 625—627, and information kindly given by the town clerk.

(*m*) This court is held under the authority of charters of Philip and Mary and

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Courts**

court is directed to be held every three weeks before the mayor or his deputy, two of the aldermen, two of the capital burgesses, and the steward or common clerk (town clerk) or his deputy. There are no rules of this court in existence, and the practice is unknown. The court fell into abeyance about 1783.

The corporation have also a court leet (*n*) and view of frankpledge, both of which had been in abeyance long before 1833 (*o*).

(clviii) *Totnes*

**Totnes.**

**466** The Totnes Court of Record, or Mayor's Law Court (*p*), is directed to be held before the mayor. There are no written rules of the court in existence, and the practice is unknown. The court has been in abeyance since 1835. There is also a court leet (*q*) held once a year before the town clerk as steward (*r*).

(clx.) *Truro*

**Truro.**

**467.** The Truro Court of Record (*s*) has jurisdiction in personal actions to any amount. The court is directed to be held weekly before the mayor or his deputy and two of the aldermen or capital burgesses. No records or rules of this court are in existence, and it had gone into abeyance before 1833.

The charter also grants a court leet (*a*) and view of frankpledge to be held twice a year before the mayor or his deputy and a court of pie poudre (*b*).

(clx.) *Wallingford*

**Wallingford**

**468.** The Wallingford Court of Record (*c*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held before the mayor, town clerk (recorder), and bailiffs, of whom the recorder is the only one not of the quorum. There is now no recorder of Wallingford (*d*). The court appears to have gone into abeyance between 1835 and 1846. The charter also grants to the corporation a court leet (*e*) and view of frankpledge (*f*).

James I (Pat. Rol., 1 & 2 Phil. & Mar., Part XII, granted 20th September, 1554, Pat. Rol., 15 Jac. I, Part III, No. 10, granted 22nd December, 1617).

(*n*) See p. 215, *post*

(*o*) Both these courts were granted by the charter of Philip and Mary (see note (*m*), p. 207, *ante*. Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 633—635).

(*p*) This court was held under the authority of a charter of Queen Elizabeth (Pat. Rol., 38 Eliz., Part XII), granted 1st September, 1596.

(*q*) See p. 215, *post*

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 641, 642, and information kindly given by the town clerk.

(*s*) This court was held under the authority of a charter of Queen Elizabeth (Pat. Rol., 31 Eliz., Part XIII), granted 20th June, 1589.

(*a*) See p. 215, *post*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 655—657. See p. 136, *ante*.

(*c*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 18 Car. 2, Part VI, No. 1).

(*d*) There was a recorder of Wallingford at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*e*) See p. 215, *post*

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp. 133, 134.

## PART XVII.—BOROUGH AND LOCAL COURTS OF RECORD.

### (cixi.) *Walsall*.

**469.** The Walsall Court of Record (*g*) has jurisdiction in actions of contract or trespass over 40s, and not exceeding £20 in amount; it is directed to be held monthly. There is a recorder of Walsall, who is judge of the court (*h*). The jurisdiction, in consequence of the judge being a barrister of five years' standing, is extended to actions of ejectment up to £20 (*i*). The practice and procedure are as in the superior courts of common law before 1852. The costs are regulated by custom, and are not more than half those allowed in the superior courts before 1852. The court has been in abeyance since about 1846 (*k*).

Particular  
Courts,  
Walsall.

### (cixii.) *Warwick*

**470** The Warwick Court of Record (*l*) has jurisdiction in personal actions up to £40. It is directed to be held weekly, and the recorder of Warwick is judge (*m*). The practice and procedure, and also the costs, were as those in the superior courts of common law before 1852. The court has been in abeyance since about 1846.

The charter also grants a court leet (*n*), which is still held for the purpose of electing officers (*o*).

### (cixiii.) *Wells*

**471.** The Wells Court of Record (*p*) has jurisdiction in personal actions to any amount. The court is directed to be held from three weeks to three weeks. The recorder of Wells is judge of the court (*q*). This court had been in abeyance since about 1630, when it was revived by mandamus in 1836 (*r*). The practice and procedure were then unknown. After this the court fell again into abeyance in 1846. Rules were made on 7th January, 1841. No table of fees is in existence.

There is also an ancient prescriptive court for the trial of pleas between burgess and burgess, which originally belonged to the Bishop of Bath and Wells, and was granted by him to the

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(*g*) This court is held under the authority of a charter of Charles I. (Pat. Rol. 3 Car 1, Part XXXVII, No 6)

(*h*) Municipal Corporations Act, 1832 (45 & 46 Vict c 50), ss 175, 176. See p 134, *ante*

(*i*) Municipal Corporations Acts, 1835 (5 & 6 Will. 4, c. 76), s. 118, and 1882 (45 & 46 Vict c 50), s 183

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp 2045—2047, and information kindly given by the town clerk.

(*l*) This court is held under the authority of a charter of William and Mary (Pat. Rol. 6 Will & Mar., Part III, No 11), granted 18th March, 1694

(*m*) Municipal Corporations Act, 1832 (45 & 46 Vict. c. 50), ss. 175, 176 See p. 134, *ante*.

(*n*) See p 215, *post*

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2057—2061, and information kindly given by the town clerk.

(*p*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 31 Eliz., Part III.), granted 23rd July, 1589

(*q*) Municipal Corporations Act, 1832 (45 & 46 Vict. c. 50), ss 175, 176. See p. 134, *ante*.

(*r*) *R. v. Wells Corporation* (1836), 4 Dowl. 862.

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Courts.**

corporation of Wells (*s*) This court has been in abeyance since the time of Charles I. The recorder of Wells is judge of this court also (*t*).

(clxiv) *Welshpool*

**Welshpool.**

**472** The Welshpool Court of Record (*a*) has jurisdiction in personal actions to any amount The court is directed to be held every fortnight before the high steward and bailiffs. The court has long been in abeyance

The charter of James I also granted to the corporation a court of pie poudre (*b*) There is also a court leet (*c*), held once a year before the deputy steward (*d*)

(clxv) *Wenlock, Much*

**Much  
Wenlock.**

**473** The Wenlock or Much Wenlock Court of Record (*e*) has jurisdiction in all actions, real, mixed, and personal, to any amount The court is directed to be held every alternate week. There is a recorder of Wenlock, who is consequently judge of the court (*f*). The proceedings are directed to be the same as those used in the King's courts There is a table of fees. The court has been in abeyance for many years (*g*).

(clxvi) *Weymouth*

**Weymouth.**

**474** The Weymouth and Melcombe Regis Court of Record (*h*) has jurisdiction in mixed and personal actions to any amount The court is directed to be held from week to week before the mayor and bailiffs, or one of them There is no recorder The forms of procedure, process, pleading etc are based on those of the superior courts of common law before 1852

The corporation of Melcombe Regis have also a grant of a court of husting (*i*), to be held once in the week

(*a*) *Temp John* The right to this court was challenged by *quo warranto* in 21 Eliz, but the corporation succeeded in proving their right to the franchise

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1365—1372, and information kindly given by the town clerk.

(*a*) This court is held under the authority of a charter of James I. (1614-5)

(*b*) See p 136, *ante*

(*c*) See p 215, *post*

(*d*) Report on Certain Boroughs, by T. J Hogg, Parliamentary Paper, 1838 (686), pp 139—143

(*e*) This court is held under the authority of a charter of Charles I (Pat. Rol, 7 Car 1, Part VI, No 11) The court was first established by a charter of 8 Edw 4

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), ss. 175, 176 See p. 134, *ante*

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp 2075—2078

(*h*) This court is held under the authority of a charter of George III (Pat. Rol, 44 Geo. 3, Part V, No 1), granted 25th May, 1804. The jurisdiction was first granted by a charter dated 27th May, 8 Edw 1, 1280

(*i*) This court is held under the authority of a charter of Edward I (Pat. Rol, 8 Edw. 1, memb. 9, No. 52) This charter granted to the burgesses of Melcombe all the liberties granted to the citizens of London. See p. 176, *ante*.



There are two court leets (*k*), one for the manor of Weymouth (*l*) and one for that of Melcombe Regis (*m*).

The corporation as successors of the corporation of Melcombe Regis (*n*) have a court of pie poudre (*o*)

(*clxvii*) *Wigan.*

**475.** The Wigan Court of Pleas (*p*) had jurisdiction in personal actions to any amount The recorder of Wigan is judge of the court (*q*) It fell into abeyance in 1776 Wigan

The charter also grants a court of pie poudre (*r*).

The corporation have a court leet (*s*) and view of frankpledge, held once a year at Michaelmas. A charter of Edward III (*t*) also grants a court baron (*a*) and a court leet and view of frankpledge to the parson of Wigan (*b*).

(*clxviii*) *Winchester City*

**476** The court of the mayor, recorder, and bailiffs of Winchester (*c*) has jurisdiction in all actions, real, mixed and personal, to any amount The court is commonly called the Town Court The court is directed to be held twice a week The recorder of Winchester is judge (*d*) The practice seems to be based on that of the superior courts of common law before 1852, but in 1883 the practice was described as extremely irregular The court appears to have originally been a court of hustings based on that of London (*e*). Winchester  
Town Court.

(*k*) See p 215, *post*

(*l*) First granted in 1252 by a charter of the prior of the church of St Swithin, Winchester, exemplified by letters patent dated 10th February, 41 Edw 3

(*m*) A charter of Queen Elizabeth (Pat Rol, 40 Eliz, Part VII, granted 6th May, 1598) confirmed to the royal demesne of Weymouth its exemption (see p 90, *ante*) from the jurisdiction of the Admiral of England (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp 1383—1388) This exemption, though abolished by statute (Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s 108), may have some effect as giving a titular admiralty jurisdiction to the mayor

(*n*) Selden Society Publications, Vol XXIII, p xv

(*o*) See p 136, *ante*.

(*p*) This court is held under the authority of a charter of Charles II (Pat Rol, 14 Car 2, Part XVIII, No 5), granted 16th May, 1662

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176 See p 134, *ante*

(*r*) See p 136, *ante*.

(*s*) See p 215, *post*

(*t*) Rot Cart, 24 Edw 3, No 7

(*a*) See p 216, *post*

(*b*) Report on Certain Boroughs, by T J Hogg, Parliamentary Paper, 1838 86, pp 151—158

(*c*) This court is held under the authority of a charter of Queen Elizabeth, granted 23rd January, 1588, a translation is printed in Milner's History of Winchester, Vol II, p 298 This town court existed from time immemorial The right of the citizens to plead only within their own walls is referred to in a charter of 1 Ric. 1, printed in Milner's History of Winchester, Vol II, p. 296

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*

(*e*) See note (*d*), p 176, *ante*

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The charter also granted a court of pie poudre (*f*), and a court of the Clerk of the Market (*g*), to be held before the mayor, and confirms to the corporation a boroughmote court, to be held twice a year in the accustomed manner. A court leet (*h*) and view of frankpledge, to be kept every year on the days accustomed, was also granted (*i*).

There was an ancient Court of the Staple at Winchester (*k*).

(clxxx) *The Bishop's Liberty of the Soke of Winchester.*

Cheney  
Court of  
Winchester

477. By prescription the Cheney (or Cheyney) (*l*) Court of the Bishop of Winchester has jurisdiction over a wide area, comprising the Soke of Winchester, but not the city, and extending over 195 parishes, tithings, and places (*m*). The bishop was judge of the court by his deputy, usually the chancellor. The court has jurisdiction in all actions, real, mixed, and personal, to any amount. The court fell into disuse on the introduction of county courts in 1846, but appears to have transacted nominal business as late as 1869 (*n*).

(clxxx.) *Windsor.*

Windsor.

478 The Windsor Record Court (*o*) has jurisdiction in personal actions to the amount of 40s., but as there is a recorder of Windsor, who is consequently judge of the court (*p*), who must be a barrister of five years' standing, the jurisdiction is extended to £20 in personal actions, and to actions of ejectment where the rent of the premises sought to be recovered does not exceed £20 and no fine is reserved by the lease (*q*). The court is directed to be held weekly. It had fallen into abeyance long before 1833.

The charter also granted a court of pie poudre (*r*).

There is a court of the Clerk of the Market (*a*), held before the mayor (*b*).

(clxxi) *Worcester*

Worcester.

479 The Worcester Court of Record, or Court of Pleas (*c*), has jurisdiction within the city, suburbs, liberties, and precincts

(*f*) See p. 136, *ante*.

(*g*) See p. 137, *ante*.

(*h*) See p. 216, *post*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II, pp. 895—903. Information kindly given by Alderman Jacob.

(*k*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.

(*l*) This name has not been satisfactorily explained. The court was held in the close.

(*m*) A list of these is given in Hampshire Repository, Vol. II, pp. 306, 307.

(*n*) Woodward, History of Hampshire, Vol. I, p. 93, n. (1).

(*o*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part II, No. 13).

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 136, *ante*.

(*q*) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 118. This jurisdiction was continued by Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 183.

(*r*) See p. 136, *ante*.

(*a*) See p. 137, *ante*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV, pp. 2932—2934.

(*c*) This court is held under the authority of a charter of James I. (Pat. Rol.,

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thereof in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. There is a recorder of Worcester, who is judge of the court (*d*). In 1856 the jurisdiction of the court was excluded in all personal actions in which the county court has jurisdiction up to £20, and in ejectments where the rent of the premises sought to be recovered does not exceed £50 (*e*).

The practice and procedure of the court are regulated by the Common Law Procedure Acts, 1852 (*f*) and 1854 (*g*), and the rules thereunder (*h*). All the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*i*), have been extended to this court (*k*). No plaints have been entered in this court since 1900 (*l*). There is a scale of fees and costs made and approved in 1889.

The charter also granted a court of pie poudre (*m*) and a court leet (*n*) and view of frankpledge (*o*).

(clxxi) *York*

**480** The York Sheriff's Court of Pleas, or York Court of York. Record (*p*), as it is now called, has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. There is a recorder of York, who is consequently judge of the court (*q*). The jurisdiction of the court is excluded in cases up to £10 in which the county court has jurisdiction (*r*).

The practice and procedure are regulated by the Common Law Procedure Acts, 1852 (*a*), 1854 (*b*), and 1860 (*c*). The whole of the

19 Jac 1, Part VII, No 1), granted 2nd October, 1622. The clause granting the jurisdiction is printed in a report by the Town Clerk of Worcester upon the jurisdiction and procedure of the Court of Pleas of the City of Worcester (1889). The franchise was first granted by a charter of 1 & 2 Phil & Mai, dated 12th April, 1554.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vic. c. 50), ss 175, 176. See p 134, *ante*.

(*e*) By Order in Council of 28th July, 1856 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 192).

(*f*) 15 & 16 Vict. c. 76.

(*g*) 17 & 18 Vict. c. 125.

(*h*) By Order in Council of 28th July, 1856 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p 190).

(*i*) 18 & 19 Vict. c. 67.

(*k*) By Order in Council of 28th July, 1856 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p. 191).

(*l*) Civil Judicial Statistics, 1900—1905.

(*m*) See p 138, *ante*.

(*n*) See p 216, *post*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I, pp 153—156. Information kindly given by the town clerk.

(*p*) This court is held under the authority of a charter of Charles II (Pat. Rol., 16 Car 2, Part XV, No 8). The franchise was originally granted by a charter of 19 Ric. 2, Rot. Cart 18 & 19 Ric 2, No 1, granted 18th May, 1398.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss 175, 176. See p 134, *ante*.

(*r*) By Order in Council of 17th May, 1890 (Statutory Rules and Orders Revised, Vol VI, Inferior Court, England, p. 196).

(*a*) 15 & 16 Vict. c. 76.

(*b*) 17 & 18 Vict. c. 125.

(*c*) 23 & 24 Vict. c. 126.

**SECT. 3.  
Particular  
Courts**

provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*d*), and of the schedule to the Borough and Local Courts of Record Act, 1872 (*e*), have also been extended to this court (*f*). The court is still in use, but no plaints appear to have been entered since 1903 (*g*).

The corporation have also a court of husting (*h*) for proceedings in lieu of fines and recoveries. This court fell into abeyance about the middle of the nineteenth century.

The charter also granted a court of *pie poudre* (*i*).

There are also a court of the Clerk of the Market (*j*), a court of Guildhall, and a court of Conservancy of the rivers Ouse, Humber, Wharfe, Derwent, Aire, and Don, both in the city and county of York and in the county of Lincoln (*k*). All these courts are to be held before the lord mayor.

There was an ancient Court of the Staple at York (*l*).

## Part XVIII.—Hundred and Manorial Courts.

### SECT. 1.—Hundred Courts

**Hundred  
courts**

**481** The only existing jurisdiction of such hundred courts as have not been made courts of record is a civil jurisdiction in actions in which less than 40s. is claimed in cases where the county court has not jurisdiction (*m*).

(*d*) 18 & 19 Vict. c. 67

(*e*) 35 & 36 Vict. c. 86

(*f*) By Order in Council of 9th March, 1854, the whole of the provisions of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), were extended to this court (Statutory Rules and Orders Revised, Vol. VI, Inferior Court, England, p. 193), and by Order in Council of 26th June, 1873, the whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), and of the Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), as well as ss. 1, 3—35, 37—67, 78—87, 89, 91—93, and 96 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), and ss. 1—11, 19—21, 28—31, 34—36, of the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126) (*ibid.*, p. 193).

(*g*) Civil Judicial Statistics, 1903—1905

(*h*) See note to (*d*) on p. 176, *ante*

(*i*) See p. 136, *ante*

(*j*) See p. 137, *ante*

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III, pp. 1737—1747, and information kindly supplied by the town clerk.

(*l*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p. 137, *ante*

(*m*) Even prior to the Norman Conquest, besides the courts for the shire, there were also courts for the hundred or wapentake, and for the tithing or township (See F. W. Maitland, *Justice and Police*). The former of these, the hundred court, after the Conquest became the hundred court, and was at first held every month, then every fortnight and from 1234 and once in three weeks (Pollock and Maitland, *History of English Law*, Vol. I, pp. 543—547).

At first the whole body of suitors were the judges, but afterwards this jurisdiction was vested in twelve men, who might either hold their office by choice for the particular occasion, or for life, or by hereditary succession (Stubbs, *Constitutional History of England*, Vol. I, p. 102).

The hundred court had both criminal and civil jurisdiction, but the criminal jurisdiction came to be exercised by way of the sheriff's tourn (see p. 118,

## PART XVIII—HUNDRED AND MANORIAL COURTS.

### SECT 2—Manorial Courts.

#### SUB-SECT. 1—In General

#### SUB-SECT. 2. Manorial Courts.

**482.** The *halimote*, which was the court of the township in pre-Norman times, developed into the manorial courts, which were the court leet, the court baron, and the customary court of the manor (a).

The *halimote*.

#### SUB-SECT 2—The Court Leet

**483** The court leet, law day, or view of frankpledge (o), which exercised the criminal jurisdiction of the *halimote*, is a court of record (p) for the cognisance of criminal matters or pleas of the Crown, and necessarily belongs to the King, although a subject, usually the lord of a manor, may be and is entitled to the profits of the court (q). The power of holding the court and taking the profits thereof was a franchise appendant to manors, either by prescription or by a grant from the Crown under letters patent. This court was held twice a year, that is, within a month after Easter and a month after Michaelmas. It was originally held before the lord or his steward (r), but the usage is that it should be held before the steward. The jurisdiction extended over such offences as were not felonies, and offenders were punishable by *amerciaments*, or by the pillory, stocks, cucking-stool, or tumbrell.

Court leet.

It is expressly enacted by statute that courts leet, courts baron, law days, views of frankpledge, or other like courts held on the 16th September, 1887, shall continue to be held on the days and in the places heretofore accustomed (s).

The jurisdiction has, however, fallen into complete disuse, having been superseded by the summary jurisdiction exercised by the justices of the peace (t).

**484** The franchise of view of frankpledge was liable to be lost by non-user, or in consequence of the lord not having proper officers, or not possessing *judicium*, such as the pillory, stocks etc. (u).

View of  
frankpledge.

*ante*), which was abolished in 1887 (Sheriffs Act, 1887 (50 & 51 Vict. c 55), s 18 (4)).

The civil jurisdiction of the hundred court was practically abolished in 1867 by the County Courts Act, 1867 (30 & 31 Vict c 142), s 28, which provided that no action which could be brought in a county court should thenceforth be commenced in a hundred court not being a court of record (as in the case of the Salford Hundred Court, see p 197, *ante*).

(a) See p 216, *post*. As to courts baron, see Vinogradoff, *The Growth of the Manor*, pp 362 *et seq*.

(o) *Visum de Frankpledge*

(p) The title of the court is "Manor of \_\_\_\_\_, Court of Frankpledge of A. B., Lord of the Manor aforesaid holden before \_\_\_\_\_."

(q) That is, the assize pence, fines, and *amerciaments* (Ritson, *Court Leet*, p 5).

(r) It is said that in ancient times it was held before the bailiff of the lord (Ritson, *Court Leet*, p 6). As to place, see *R. v Ilchester (Bastiff)* (1824), 2 B & C 764.

(s) Sheriffs Act, 1887 (50 & 51 Vict c 55), s. 40. "The courts leet etc shall not have any larger powers, nor shall any larger fees be taken thereat, than previously, and indictments and presentments shall be dealt with as previously."

(t) See title *MAGISTRATES*

(u) *Tottersall's Case* (1632), W Jo 283.

## SECT. 2.

Manorial  
Courts.Borough  
courts leet

485. In many cases manorial rights were vested in a borough, and thus, or by a separate royal grant, the corporation had the right to hold a court leet (a), which then became the appropriate court in which the mayor or portreeve and other officers were appointed (b).

SUB-SECT 3—*The Court Baron*

## Court baron

486 The civil jurisdiction of the halmote was exercised by the court baron (c), which, like the court leet, was a franchise incident to a manor (d) either by prescription or grant by letters patent. The abolition of real actions in 1883 (e) destroyed the obsolete jurisdiction of these courts under the original writs directed to them (f). In 1867 their jurisdiction was abolished in all actions maintainable in a county court, except where they were courts of record (g). The effect of this legislation is to restrict their jurisdiction as courts for the trial of actions to such cases as are not within the jurisdiction of the county court, and in which under 40s. is claimed as debt or damages (h).

SUB-SECT 4—*The Customary Court*Customary  
court.

487 The origin of this court is obscure. It apparently arose out of the absolute jurisdiction of the lord over his villeins. The customary court had for its suitors the copyholders and customary tenants of the manor (i). In case a reputed manor had not the two freeholders as tenants necessary to constitute the court baron, the right to hold a court for the copyholders and customary tenants still subsists (k).

There may also be a customary manor held of another manor by copy of court roll, with copyholders and a customary court for them (l). A court may be held for purely ministerial purposes, although no copyholders or customary tenants are present (m).

(a) See under the separate boroughs in Part XVII, sect 5, of this title, *ante*, for grants of courts leet.

(b) The Municipal Corporations Act, 1883 (46 & 47 Vict c 18), abolished a large number of unreformed corporations and the civil and criminal courts which they held by charter or prescription, but the Act expressly saved the courts leet of Over and Altrincham for the purpose of electing titular mayors. The court leet of the Precinct of the Savoy is still held, and exercises the jurisdiction over nuisances etc. See Carter, *History of English Legal Institutions*, p. 291.

(c) See the Court Baron, Selden Society Publications, Vol IV.

(d) A court baron is incident to a manor, and a manor cannot be without a court baron and suitors or freeholders, two at the least (Scroggs, *Courts Leet and Courts Baron*, 4th ed., p. 79).

(e) Real Property Limitation Act, 1833 (3 & 4 Will 4, c 27).

(f) See title ACTION, Vol V, p 45.

(g) See note (m) on p 214, *cf*.

(h) These courts baron were (1) to adjust differences between lord and lord adjoining, (2) to keep t and quietness between lord and tenant, that the lord should permit the tenant to enjoy, paying his rent and performing his services, and that the tenant should not wrong the lord by withdrawing his rent, custom, or services (*ibid.*, 83). As to the court baron, see title COPYHOLDS, Vol VIII, p 10.

(i) See title COPYHOLDS, Vol VIII, p 11.

(k) Scroggs, *Courts Leet and Courts Baron*, 4th ed., pp 80, 81.

(l) *Ibid.*

(m) Copyhold Act, 1894 (57 & 58 Vict c 46), ss. 82, 83. See, further, title COPYHOLDS, Vol. VIII, p. 11.

## PART XVIII.—HUNDRED AND MANORIAL COURTS.

### SUB-SECT. 5.—*Courts of Ancient Demesne.*

SECT. 2.  
Manorial  
Courts.

Courts of  
ancient  
demesne.

488 Those manors which were in the hands of Edward the Confessor or William the Conqueror, and are so expressed in Domesday Book, are called the ancient demesne of the Crown. All those who hold in socage of these manors are tenants in ancient demesne. The courts of these manors are called courts of ancient demesne. These courts are similar to courts baron, and, like them, they are not courts of record, and the suitors are the judges, and two suitors are necessary to the existence of the court (a).

## Part XIX.—Judicial Commissioners.

### SECT. 1.—*The Railway and Canal Commission.*

#### SUB-SECT. 1.—*Constitution and Judges*

Constitution  
of the  
Railway  
and Canal  
Commission.

489. The Railway and Canal Commission was constituted in its present form in 1888 (o). It consists of two commissioners appointed by His Majesty on the recommendation of the President of the Board of Trade, one of whom is to be of experience in railway business (p), and three *ex-officio* commissioners, one each for England, Scotland, and Ireland respectively, being such judge of a superior court as shall be nominated, in the case of England, by the Lord Chancellor, of Scotland by the Lord President of the Court of Session, and of Ireland by the Lord Chancellor of Ireland. The *ex-officio* commissioners are not required to attend sittings of the Commission outside of that part of the United Kingdom for which they are nominated (q).

The appointed commissioners are paid such salary not exceeding £3000 a year as the President of the Board of Trade may, with the concurrence of the Treasury, appoint (r).

The presence of three commissioners is required for the hearing of any case. The *ex-officio* commissioner presides, whose opinion prevails on all points of law. If the *ex-officio* commissioner is unable to attend another judge may be nominated to sit for him, and similarly, if an appointed commissioner cannot attend, the President of the Board of Trade may nominate a temporary commissioner to hear any particular case (s). On an address from both Houses of Parliament an additional judge of the High Court

(a) 4 Co. Inst. 269

(o) Railway and Canal Traffic Act, 1885 (51 & 52 Vict. c. 25), s. 2. This Act repealed s. 4 of the Railway and Canal Traffic Act, 1873 (36 & 37 Vict. c. 43), which provided for the appointment of three commissioners, one of whom was to be of experience in the law and one of experience in railway business, and of not more than two assistant commissioners. As to procedure before the commissioners, see title RAILWAYS AND CANALS.

(p) *Ibid.*, s. 3.

(q) *Ibid.*, s. 4.

(r) *Ibid.*, s. 3 (4).

(s) *Ibid.*, s. 5 (6), (7).

SECT. 1.  
The  
Railway  
and Canal  
Commission  
Jurisdiction.

may be appointed, if the amount of business before the Commission renders it advisable (t)

SUB-SECT. 2.—*Jurisdiction*

490. The jurisdiction of the Commission over railway and canal companies is to hear and determine complaints in respect of— (1) undue preference or traffic facilities (including through rates (a) and junctions with private sidings (b)), arising either under s. 2 of the Railway and Canal Traffic Act, 1854 (c), or under the special Act of the company (d), (2) accommodation works or obligations in favour of the public or individuals enacted in the special Act (e), (3) disputes as to the legality of tolls and rates (f), (4) the publication of rates by a station ratebook (g); (5) terminal charges (h), (6) increase of rates and charges since 31st December, 1894 (i), (7) allowances in respect of terminals to owners of sidings (k), (8) the approval of working agreements between companies (l), (9) differences with the Postmaster-General as to the conveyance of mails (m), (10) differences between railway companies (in lieu of arbitration) (n), (11) under the Cheap Trains Act, 1883 (o), (12) agreements whereby a railway company obtains control over a canal (p), (13) as to hours of railway servants (q), (14) as to the working of traffic by way of steamboats (r), (15) as to complaints as to water supply in the area of the Metropolitan Water Board (s), (16) to hear appeals from stipendiary magistrates or county court judges determining differences as to the placing of telegraphs upon public roads (t), (17) to hold local inquiries and make provisional orders for the construction of telegraph works on private land (a)

The Board of Trade has also power to appoint the Railway Commissioners arbitrators in cases where matters are directed to be referred to the arbitration of the Board of Trade or of arbitrators appointed by them (b)

The commissioners have also power to report to Parliament in

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(f) Railway and Canal Traffic Act, 1888 (51 & 52 Vict c 25), s 6 This power has not been exercised

(a) *Ibid*

(b) Railways (Private Sidings) Act, 1904 (4 Edw 7, c 19)

(c) 17 & 18 Vict. c 31

(d) Railway and Canal Traffic Act, 1888 (51 & 52 Vict c 25), ss 8, 9, 11.

(e) *Ibid*, s 9

(f) *Ibid*, s 10

(g) Regulation of Railways Act, 1873 (36 & 37 Vict c 48), s 14

(h) *Ibid*, s 15

(i) Railway and Canal Traffic Act, 1894 (57 & 58 Vict c 54), s 1.

(k) *Ibid*, s 4

(l) See also Railways Clauses Act, 1863 (26 & 27 Vict. c 92), s 25

(m) Regulation of Railways Act, 1873 (36 & 37 Vict c 48), s 19, Conveyance Act, 1893 (56 & 57 Vict. c. 38), ss 1, 4 (by the appointed commissioners).

(n) Regulation of Railways Act, 1873 (36 & 37 Vict c 48), s 8

(o) 46 & 47 Vict. c 34

(p) Regulation of Railways Act, 1873 (36 & 37 Vict c 48), s 16.

(q) Railway Regulation Act, 1893 (56 & 57 Vict c. 29), s 1

(r) Regulation of Railways Act, 1868 (31 & 32 Vict. c 119), s. 16.

(s) Metropolis Water Act, 1897 (60 & 61 Vict. c. 56)

(t) Telegraph Act, 1878 (41 & 42 Vict c 76)

(a) Telegraph Act, 1892 (55 & 56 Vict. c. 7

(b) Board of Trade Arbitrations etc. Act

Act. c. 40), s. 6.



case they are of opinion that the interests of the public are injuriously affected by the exercise of any railway companies' powers as to steam vessels (c).

SECT. 1.  
The  
Railway  
and Canal  
Commission.

SECT. 2.—*Land Tax Commission.*

Land Tax  
Commission

491. The Land Tax Commission consists of commissioners appointed by name by statutes passed from time to time in that behalf (d), with the addition of justices of the peace within their respective counties, ridings, divisions, districts (e), and boroughs (f). In the case of cities, boroughs, Cinque Ports, and towns corporate a commissioner must be qualified by being an inhabitant (g).

These commissioners, two of whom are a quorum (h), have power to hear and finally determine without appeal all questions and differences respecting the assessment and collection of land tax, on complaint of any person aggrieved (i).

If any commissioner is interested in any question brought before the commissioners he is disqualified and must retire till the remainder of the commissioners have given their decision (k). If he refuses to withdraw, the other commissioners have power to inflict upon him a fine not exceeding £20 (l), or a suit in the name of the Attorney-General may be brought in the High Court against him for a penalty of £50 (m).

SECT. 3.—*Income Tax Commissioners.*

492. There are two classes of Income Tax Commissioners namely, the Commissioners for the General Purposes of the Income Tax Acts and the Commissioners for the Special Purposes of those Acts. The first of these, called "the general commissioners" (n), are appointed by the Land Tax Commissioners from their own number (o) to act for the county or other district over which they have jurisdiction. The second, called the "special commissioners" (p), consist of the Inland Revenue Commissioners and such persons as are appointed by the Treasury (q).

Income Tax  
Commis-  
sioners.

These two bodies have jurisdiction to hear appeals from persons

(c) Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 35, Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 10. See also, generally, title RAILWAYS AND CANALS.

(d) The latest statute is the Land Tax Commissioners Act, 1906 (6 Edw. 7, c. 52). The land tax was imposed in 1689 (1 Will. & Mar. c. 3), and was at first annual, but was made perpetual by the Land Tax Act, 1798 (38 Geo. 3, c. 5). The Act of 1689 named the first commissioners.

(e) Land Tax Commissioners Act, 1827 (7 & 8 Geo. 4, c. 76), s. 1.

(f) Land Tax Commissioners Act, 1906 (6 Edw. 7, c. 52), s. 3.

(g) Land Tax Commissioners Act, 1798 (38 Geo. 3, c. 48), s. 1.

(h) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 6.

(i) Land Tax Act, 1797 (38 Geo. 3, c. 5), s. 23.

(k) *Ibid.*

(l) *Ibid.*

(m) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), ss. 21, 35. See also, generally, title LAND TAX.

(n) *Ibid.*, s. 5.

(o) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 4.

(p) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 5.

(q) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 23.

**SECT. 3.** aggrieved by assessments or surcharges for income tax and objections to such assessments by the inspector or surveyor of taxes.  
**Income Tax Com- missioners** The general commissioners have also jurisdiction to hear appeals from persons aggrieved by assessments for inhabited house duty (*r*).

A person aggrieved by an assessment under Schedule D of the Income Tax Acts may appeal either to the general commissioners or to the special commissioners, except in the case of exemption or relief on account of his income being less than £700 a year, in which case the appeal lies to the general commissioners only (*s*).

Claims for allowances in respect of the duties in Schedule A by colleges, public schools, hospitals, almshouses, literary institutions, and charities are to be made to the special commissioners (*t*), as also are claims for exemption from the duties in Schedule C (*a*).

The decisions both of the general (*b*) and special commissioners (*c*) are final, except when the appellant or the surveyor at once expresses his dissatisfaction with the decision as being erroneous in point of law, and within twenty-one days requires a case to be stated for the opinion of the High Court of Justice (*d*).

An appeal lies from the decision of the High Court to the Court of Appeal, and thence to the House of Lords (*e*).

#### SECT 4 — *Commissioners of Sewers.*

##### SUB-SECT 1 — *Constitution*

**Com- missioners of sewers.**

**493** Commissions of sewers are issued by way of Letters Patent under the Great Seal, from time to time as need requires, to such substantial and indifferent persons as are named by the Lord Chancellor, the Lord Treasurer, and the Lord Chief Justice (*f*). Commissions of sewers can also issue on recommendation of the Inclosure Commissioners to be obtained on petition of the proprietors after investigation by an inspector (*g*).

The Commissioners of Sewers are required to be sworn in the prescribed form (*h*), and are to forfeit £40 for every time they shall attempt to act if unsworn (*i*).

Commissions of sewers stand and continue in force for ten years, unless they are determined by the issue of a new commission or by a writ of *supersedeas* discharging such commission or commissions (*k*).

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- (*r*) Taxes Management Act, 1880 (43 & 44 Vict. c 19), ss. 27 (1), 57 (2).  
 (*s*) Income Tax Act, 1842 (5 & 6 Vict. c 35), ss. 118, 130, Finance Act, 1893 (51 & 52 Vict. c 10), s. 8.  
 (*t*) Income Tax Act, 1842 (5 & 6 Vict. c 35), s. 62.  
 (*a*) *Ibid.*, s. 98. See also, generally, title **INCOME TAX**.  
 (*b*) Taxes Management Act, 1880 (43 & 44 Vict. c 19), s. 57 (10).  
 (*c*) Income Tax Act, 1842 (5 & 6 Vict. c 35), s. 130.  
 (*d*) Taxes Management Act, 1880 (43 & 44 Vict. c 19), s. 59.  
 (*e*) *Ibid.*, s. 59 (3). See *R. v. General Commissioners for Taxes for Olerkenwell*, [1901] 2 K B 879, 894, C A.  
 (*f*) General Act concerning Commissions of Sewers to be directed to all parts within this realm, 1531 (23 Hen. 8, c. 5), s. 1.  
 (*g*) Land Drainage Act, 1861 (24 & 25 Vict. c 133), ss. 4, 5.  
 (*h*) 23 Hen. 8, c. 5, s. 2.  
 (*i*) *Ibid.*, s. 7.  
 (*k*) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 6.

Commissioners of Sewers have full power and authority to make, constitute, and ordain laws, ordinances, and decrees, and to amend and repeal such laws, and to make new laws as the cases necessary require in that behalf (l).

SECT 4.  
Commissioners of  
Sewers.

494. The Commissioners of Sewers have a court, although the statutes do not in express terms grant a court. They are, however, said to be the King's justices (m), and the Court of King's Bench has held that they have a court of record (n). They may command the sheriffs by their mandatory writs to summon a jury of twelve men for the purpose of an inquiry (o).

The court of  
the com-  
missioners.

#### SUB-SECT 2 —Jurisdiction

495. The Commissioners of Sewers have jurisdiction to survey the walls, ditches, banks, gutters, sewers, goots, calces, bridges, streams, and other defences by the coasts of the sea, and marsh ground, and mills, milldams, floodgates, ponds, locks, hebbing weares, and other impediments, lets, and annoyances, and to cause the same to be corrected, repaired, amended, put down, or reformed as the case shall require after their wisdom and discretion (p). All walls, banks, culverts, and other defences whatever, whether natural or artificial, situate by the coasts of the sea, and all rivers, streams, sewers, and watercourses which are navigable or where the tide ebbs and flows, and all walls, banks, culverts, bridges, dams, floodgates, and other works erected in, upon, over, or adjoining such rivers etc., are within the jurisdiction of the commissioners, except ornamental works erected before 1833 and watercourses near or contiguous to houses or buildings, or in gardens, parks, avenues etc., in which cases the consent of the owner in writing is necessary to authorise the commissioners to exercise jurisdiction (q). They may also decree and ordain new works or alterations in old works, and may abandon old works and decree and ordain new works in lieu thereof (r); but no new works are to be made without the consent of the owners and occupiers of three fourth parts in value of the lands to be charged (s).

Jurisdiction.

The Commissioners of Sewers by themselves without a jury may survey the defences and ascertain the defects and what is necessary for repairing them and the cost thereof (t).

(l) General Act concerning Commissions of Sewers, 1531 (23 Hen 8, c. 5), s. 4.

(m) *Ibid.* "We therefore . . . have assigned you . . . to be our justices," form of commission contained in s. 1.

(n) *Newcastle (Duke) v Clark* (1818), 8 Taunt 602, 625, 627, 631. "An Act of Parliament was made in the year 1531, previously to which the commissioners of sewers had a regular jurisdiction of oyer and terminer, which they had been accustomed to have at all times" (*ibid.*, per BURBROUGH, J., at p. 631).

(o) 23 Hen 8, c. 5, s. 1, *Newcastle (Duke) v Clark*, *supra*, at p. 627, per PARK, J., Sewers Act, 1833 (3 & 4 Will 4, c. 22), s. 11.

(p) General Act concerning Commissions of Sewers, 1531 (23 Hen. 8, c. 5), s. 1.

(q) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 10.

(r) *Ibid.*, s. 19.

(s) *Ibid.*, s. 21.

(t) *Callis on Sewers*, 107. See, as to sewers generally, title SEWERS AND DRAINS.

**SECT. 4**  
**Commissioners of**  
**Sewers**

Presentments  
by jury.

**496** A jury may present (1) the erection of impediments, as floodgates, mills etc., (2) by whose default defects in the defences have arisen; (3) what persons are bound by custom, prescription, tenure, covenant, or otherwise to repair defects; (4) what grounds lie within the hurt or danger of waters, either within the surrounders by the sea or the inundation of the fresh waters, and to whom they belong, (5) what persons hold lands which are chargeable to new works, and the quantity of their lands, (6) amerciaments (*a*). The presentments of the jury must be made on evidence on oath before the commissioners in court and not upon information collected *in pais* without oath (*b*)

Appeals.

**497.** All orders and rates made by the Commissioners of Sewers without the presentment of a jury can be appealed against to quarter sessions, when the matter may be decided by the justices or by arbitration (*c*)

**SECT 5 —Board of Agriculture and Fisheries**

Tithe  
commutation.

**498** The jurisdiction under the Tithe Commutation Acts is exercised by the Board of Agriculture and Fisheries (*d*), and appears now to be restricted to altering the apportionment of tithe rentcharge in certain cases (1) between different lands of the same person at his desire and at his expense (*e*), (2) where lands charged with one rentcharge have become vested in several owners (*f*), (3) where divisions of lands have been altered under Inclosure Acts (*g*), (4) where the boundaries of parishes have been changed (*h*), (5) where lands have been included in an apportionment by mistake (*i*), (6) where rentcharge has been made payable to the wrong person or in the wrong interest (*k*), (7) where the Board, with the consent of the owners, think it desirable (*l*), (8) where alterations have made the collection of the rentcharge unreasonably difficult or inconvenient (*m*), and (9) where through the removal of fences difficulties have arisen as to what land is liable to rentcharge etc (*n*)

(*a*) Calls on Sewers, 108—110, Sewers Act, 1833 (3 & 4 Will 4, c 22), s 10

(*b*) *R v Somerset Commissioners of Sewers* (1805), 7 East, 71

(*c*) Sewers Act, 1833 (3 & 4 Will 4, c 22), ss 47—50

(*d*) The Tithe Commissioners were constituted by the Tithe Act, 1836 (6 & 7 Will 4, c 71), s 1. These Tithe Commissioners were united in 1882 with the Copyhold Commissioners and the Inclosure Commissioners, and the three sets of commissioners were constituted the Land Commissioners (Settled Land Act, 1882 (45 & 46 Vict. c 35), s 48). In 1889 the powers and duties of the Land Commissioners were transferred to the Board of Agriculture (now the Board of Agriculture and Fisheries) (Board of Agriculture Act, 1889 (52 & 53 Vict. c 30), s. 2, Sched. I, Pt II). As to the Board of Agriculture and Fisheries, see title AGRICULTURE, Vol I, p 297

(*e*) Tithe Act, 1842 (5 & 6 Vict. c. 54), s 14

(*f*) *Ibid.*, s. 14

(*g*) Tithe Act, 1846 (9 & 10 Vict. c. 73), s 13

(*h*) Tithe Act, 1860 (23 & 24 Vict. c 93), s. 16.

(*i*) Tithe Act, 1847 (10 & 11 Vict. c. 104), s. 3

(*k*) Tithe Act, 1846 (9 & 10 Vict. c. 73), s 15

(*l*) Tithe Act, 1860 (23 & 24 Vict. c. 93), s. 11.

(*m*) *Ibid.*, s. 16.

(*n*) *Ibid.*, s. 13

The Board of Agriculture and Fisheries have power to summon witnesses, administer oaths and examine witnesses on oath, and cause to be produced before them, on oath, all necessary books, terriers, maps, plans etc. (o) Witnesses refusing to answer or to produce documents etc. are to be deemed guilty of a misdemeanour (p)

SECT. 5.  
Board of  
Agriculture  
and  
Fisheries

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(o) Tithe Act, 1836 (6 & 7 Will 4, c 71), s 10

(p) *Ibid.*, s 93 As to tithe, see title ECCLESIASTICAL LAW

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## COURTS-MARTIAL.

*See* COURTS, ROYAL FORCES.

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## COVENANTS.

*See* CONTRACT, DEEDS AND OTHER INSTRUMENTS, LANDLORD AND  
TENANT, SALE OF LAND.

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## COVERTURE.

*See* HUSBAND AND WIFE.

## COWSHEDS AND DAIRIES.

*See* PUBLIC HEALTH ETC.

## CREMATION.

*See* BURIAL AND CREMATION.

## CRIMINAL INFORMATION.

*See* CRIMINAL LAW AND PROCEDURE, CROWN PRACTICE.

# CRIMINAL LAW AND PROCEDURE.

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| <i>Summary Jurisdiction, Courts of</i> - - -           |                  | MAGISTRATES                           |
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NOTE—For Crimes and Offences not included in the above tables see the appropriate titles—e.g., Cruelty to Animals will be found under title ANIMALS, Corrupt Practices under title ELECTIONS, and so on

## Part I.—Principles of Criminal Liability.

### SECT 1—*The Nature of Crime in General.*

#### SUB-SECT 1—*Definitions*

Definition of crime.

**499** Criminal law and procedure deal with the nature, prosecution, and punishment of crime

Distinction between criminal and civil proceedings.

A crime is an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment (a) While a crime is often also an injury to a private person, who has a remedy in a civil action, it is as an act or default contrary to the order, peace, and well-being of society that a crime is punishable by the State (b) A civil proceeding has for its object the recovery of money or other property, or the

(a) 4 Bl Com. 5, Stephen, History of the Criminal Law, Vol I., 1; *Mann v. Owsen* (1829), 9 B & C 595, at p 599 "An illegal act which is a wrong against the public welfare seems to have the necessary elements of a crime" (*Mogul Steamship Co v McGregor, Gow & Co* (1889), 23 Q B D 598, C. A., at p. 606, per Lord ESHER, M R.)

(b) This is expressed by the common forms at the end of indictments "against the peace of our Lord the King," or "against the form of the statute in such case made and provided" And see *Parker v Green* (1862), 2 B. & S 299, *Mellor v Denham* (1880), 5 Q. B. D. 467, *R. v. Sullivan* (1874), 8 I R. O L. 404.

enforcement of a right for the advantage of the person suing, while a criminal proceeding has for its object the punishment of a public offence (c).

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The Nature  
of Crime in  
General.

Punishment.

500. Legal punishment is punishment awarded in a process which is instituted at the suit of the Crown "standing forward as prosecutor on behalf of the subject on public grounds" (d); such process when instituted can only be stayed at the instance of the Attorney-General acting on behalf of the Crown, and such punishment when awarded can only be remitted by the Crown or Parliament.

Legal punishment is of various kinds, and includes death, imprisonment, detention, flogging, fine and confiscation of property; it is sometimes attended with disqualification, loss of civil status and political rights (e).

#### SUB-SECT. 2—Criminal Intention.

501. A person cannot be guilty of a crime unless he has committed an overt act, *i.e.*, an act capable of being observed by some one else, or has made default in doing some such act (f), and unless a wrongful intention or some other blameworthy condition of the

Elements of  
crime Over-  
act and  
mens rea

(c) *A-G v Radloff* (1854), 10 Exch. 84, *per* PLATT, B., at p. 101. See also *Re Douglas* (1842), 3 Q. B. 825. If a statute prohibits or commands an act of commission or omission of public importance, disobedience to the statute is criminal and punishable by indictment, unless such proceeding manifestly appears to be excluded by the statute (2 Hawk. P. O., c. 26, s. 4). [As regards the references to Hawkins's Pleas of the Crown, it may be noted that the editions chiefly used are those by Leach (1795), and Curwood (1824). There is some difference of opinion as to the merits of these editions, but after consideration the editors have given the preference to the latter, which is the edition used in many of the courts and in most of the principal law libraries. In some cases reference has been made to the first (1716) folio edition], *R v Hall*, [1891] 1 Q. B. 747. An act or default may be "forbidden by statute in such a way that the person guilty may be liable to a pecuniary penalty, which is recoverable as a debt by civil process by a private person, or in some cases only by an officer of the Crown, such an act or default is an offence against the statute, but is not a crime (see *Atcheson v Everitt* (1776), 1 Cowp. 382, *Ex parte Beeching* (1825), 4 B. & C. 136, *A-G v Siddon* (1830), 1 Cr. & J. 220, *A-G v Radloff* (1854), 10 Exch. 84, *Parker v Green* (1862), 2 B. & S. 299, *R v Hawkhurst (Parish)* (1862), 26 J. P. 772, *A-G v Bradlaugh* (1885), 14 Q. B. D. 667, C. A., *R v Tyler*, [1891] 2 Q. B. 586, C. A., *per* BOWEN, L. J., at p. 594). The words "penalty" and "offence" are sometimes used of a criminal act (see *R v Paget* (1881), 8 Q. B. D. 151), sometimes of an act which is not criminal (*A-G v Radloff*, *supra*). The same act or default may give rise to a civil and to a criminal proceeding, *e.g.*, assault and battery, wounding, larceny, libel. See title ACTION, Vol. I., pp. 27—29, as to civil actions in respect of felonious torts.

(d) *Burdett v. Abbot* (1811), 14 East, 154, at p. 162, *per* BAYLEY, J. Any private person, in the absence of statutory provision to the contrary, can commence a criminal prosecution, but the prosecution is always at the suit of the Crown. Hence it is that criminal proceedings were called pleas of the Crown.

(e) See p. 409, *post*.

(f) In some kinds of treason (*e.g.*, compassing the death of the Sovereign) the intention constitutes the crime, but the law requires that the intention should be manifested by some overt act (*R v Thistlewood* (1820), 33 State Tr. 682; see p. 451, *post*). In conspiracy, the agreement of two or more persons to do an unlawful act is criminal, as the agreement can only be arrived at by consultation, which is an overt act, if two or more persons so agree, the very plot is an

**SECT. 1.** mind (*mens rea*) can be imputed to him in respect of such act or default (g).  
**The Nature of Crime in General**

A blameworthy condition of the mind will not be imputed to a person who does an overt act, unless the act is voluntary; in many cases the act will not be criminal unless it is also deliberately intended (h).

*Mens rea*, or a blameworthy condition of the mind, may consist of a traitorous or malicious or fraudulent intent or of guilty knowledge or negligence (i), or, if an act is morally wrong and is also forbidden by law (j), *mens rea* may consist of the mere intent to do the act. But *mens rea* may also consist simply of an intent to do an act which is forbidden by law, or to omit to do an act when the omission is an offence (k).

Responsibility of master for acts of servants.

**502** Where a particular intent or state of mind is of the essence of an offence, the person committing the act is not criminally responsible, if he had no *mens rea* and the act was ordered or procured by another person, but the person who ordered or procured the act is criminally responsible (l).

In general a person is not criminally liable for an act or omission unless he has himself committed or omitted the act or authorised or known of or shut his eyes to the commission or omission (m).

act of itself and is criminal (*Mulcahy v R* (1868), L R 3 H L 306, *R v Aspinall* (1876), 2 Q B D 48 C A, per BRETT, J, at p 58)

(g) *Actus non facit reum, nisi mens sit rea*, see Stephen, History of the Criminal Law, Vol II, 94. As to cases where *mens rea* need not be proved, see *infra*.

(h) 4 Bl Com 20. A voluntary act or omission is one which is willed. An involuntary act or omission is one which is not willed, e.g., an act done by a person in a state of unconsciousness, as in sleep, or by a person of such tender years or in such a state of idiocy or insanity that he has, or is deemed to have, no mind and therefore no will (see p 241, *post*), or by a person who is constrained by overwhelming force to act in a particular way (see p 243, *post*). For the purposes of criminal law, an act or omission is voluntary if it might have been avoided by the exercise of reasonable care, thus a negligent act or omission is willed, because the person responsible does not will to prevent the commission or omission. An accidental act or omission is involuntary, and therefore not criminal, if it could not have been avoided by the exercise of reasonable care (see p 238, *post*). An act is intended when it is willed and when the ordinary consequences of the act are contemplated and desired (see Austin's Jurisprudence, Vol I, p 441, Stephen, History of the Criminal Law, Vol I, 99). As to the effect of drink on the will, see p 242, *post*.

(i) *Chisholm v Doulton* (1889), 22 Q. B. D. 736.

(j) *R v Prince* (1875), L R. 2 O C R 154, *R v. Tolson* (1889), 23 Q B D. 168, C A. If the act is morally wrong, it is no defence in such a case that the accused did not know that the act was forbidden by law (*R v Prince, supra*).

(k) See *R v Bishop* (1880), 5 Q. B. D. 259, C C R., *Bank of New South Wales v. Piper*, [1897] A. C. 383, P C, at p 389. In such case an intent to break the law is imputed, as a person cannot set up ignorance of law as an excuse (see p. 236, *post*).

(l) *R v Giles* (1827), 1 Mood C C 166, *R v Michael* (1840), 9 C. & P 356; *R v Williams* (1842), Car & M 259, *R v Manley* (1844), 1 Cox, C C 104, *R v Bull* (1845), 1 Cox, C C 281, *R v Clifford* (1845), 2 Car & Kir 202, *R v Bleasdale* (1848), 2 Car & Kir 765, per ERLE, J, at p 768, *R v Butcher* (1858), Bell, C C 6, see Merchandise Marks Act, 1887 (50 & 51 Vict. c 26), s. 19 (3).

(m) See *R v Pearson* (No. 2) (1908), 72 J P 461, *R v Key* (1909), 83 Sol Jo 784.



The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable (a). A master is not criminally liable merely because his servant or agent commits a negligent (b) or malicious (c) or fraudulent act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his orders (d)

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General.

**503** A corporation aggregate can only act through its servants or agents, and it is only through the acts and defaults of such persons that it can be made criminally liable. A corporation aggregate may be made liable in its corporate capacity for a crime for the punishment of which a fine may be awarded, if the corporation fails to perform a duty imposed by common law, charter, or

Corporations

(a) *R v Holbrook* (1877), 1 Q. B. D. 60, at p. 63, (1878) 4 Q. B. D. 42, at p. 47, see *Newman v Jones* (1886), 17 Q. B. D. 132

(b) *R v Allen* (1833), 7 C. & P. 153, *R v Bennett* (1856), 11 Ell. C. C. 1, *Dickenson v Fletcher* (1871), L. R. 9 C. P. 1, *Chisholm v Doulton* (1889), 22 Q. B. D. 736

(c) *R v Huggins* (1730), 2 Ld. Raym. 1574. A master is not responsible criminally for his servant's libel, if he can prove that the publication was without his authority and did not proceed from want of due care or caution on his part (Label Act, 1843 (6 & 7 Vict. c. 96), s. 7, and see *R v Holbrook* (1877), 1 Q. B. D. 60, (1878) 4 Q. B. D. 42

(d) *R v Stephens* (1866), L. R. 1 Q. B. 702, see *A. G. v Siddons* (1830), 1 Cr. & J. 220, *R v Medley* (1834), 6 C. & P. 292, *Barnes v Akroyd* (1872), L. R. 7 Q. B. 474, but see *Chisholm v Doulton*, *supra*. Under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), the acts of the servant unknown to the master may make the master criminally liable (see *Furley v Higginbotham* (1898), 42 Sol. Jo. 309 (refusal to sell to a police officer), *Morris v Corbett* (1892), 56 J. P. 649, *Brown v Foot* (1892), 61 L. J. (M. C.) 110 (sale of milk from which cream had been extracted), but see *Kearley v Jongs* (1891), 60 L. J. (M. C.) 159, which, however, is probably not law. See title FOOD AND DRUGS. For other instances of a master or principal being criminally liable for the acts of his servant or agent, see *Davies v Harvey* (1874), L. R. 9 Q. B. 433 (supply of goods to be used for parochial relief), *Mullins v Collins* (1874), L. R. 9 Q. B. 292 (supplying liquor to constable on duty), *Redgate v Haynes* (1876), 1 Q. B. D. 89, *Bond v Evans* (1888), 21 Q. B. D. 249 (suffering gaming), but see *Somerset v Hart* (1884), 12 Q. B. D. 360, *Roberts v Woodward* (1890), 25 Q. B. D. 412 (weights and measures), *Collman v Mills*, [1897] 1 Q. B. 396 (bye-law), *Booley v Davies* (1875), 1 Q. B. D. 84 (suffering gaming). *Commissioners of Police v Cartman*, [1898] 1 Q. B. 655 (sale of intoxicating liquor to drunken person). See also title MASTER AND SERVANT. In a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2(2), for selling goods to which a false trade description is applied, the master is criminally liable for the acts of his servant acting within the general scope of his employment, but contrary to his orders, unless he can show that he has acted in good faith and has done all that it was reasonably possible to do to prevent the commission of the offence by his servants (*Coppen v Moore* (No. 2), [1898] 2 Q. B. 306), the onus of proof is on the master, and, if he can show that he has acted innocently, he is not criminally liable (*Christie, Manson and Woods v Cooper*, [1900] 2 Q. B. 522). A licensed person cannot be convicted under the Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2, of "knowingly allowing a person to sell" intoxicating liquor to a child under fourteen in a vessel not properly corked or sealed, if the liquor is sold by a servant without the knowledge of the master and against his express orders and the master was himself in charge of the premises at the time (*Emery v Nolloth*, [1903] 2 K. B. 284), see also title INTOXICATING LIQUORS.

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**of Crime in**  
**General**

Proof of  
*mens rea*.

statute or commits by its servants or agents, acting in the course of their employment, an offence which does not involve criminal intent (e).

**504** In all the graver class of crimes a particular intent or state of mind is a necessary ingredient of the offence, and must be averred in the indictment and proved by the prosecution (f).

When an act which is of itself indifferent becomes criminal if done with a particular intent, the intent must be proved (g). But when the act is unequivocal, the proof that it was done may of itself be evidence of the intention which the nature of the act conveys (h). In such case there is a presumption of law that the person accused intended the probable consequences of his act (i).

Disproof of  
*mens rea*.

**505** When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and *prima facie* proof of the existence of such intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, e.g., by showing that he was justified in doing the act with which he is charged (k), or that he did it accidentally, or in ignorance (a), or that he had an honest and reasonable belief in the existence of facts which, if they had really existed, would have made the act both legally and morally innocent (b).

(e) See title CORPORATIONS, Vol VIII, p 390. There is a special proceeding against corporations which was originally criminal, namely, an information by *quo warranto* against a corporation for negligence or abuse of its franchises, but this has now for long been regarded as a civil proceeding (see 1 Bl Com. 473, 3 *ibid* 263, 4 *ibid* 307, Judicature Act, 1894 (47 & 48 Vict c 61), s 15), and see *A-G v London Corporation* (1893), 8 State Tr 1039, and title CROWN PRACTICE.

(f) See p 341, *post*. Sometimes a statute which constitutes an offence, while not expressly making a particular intent or state of mind a necessary ingredient of the offence, does so by implication (*R v Cohen* (1858), 8 Cox, C. C. 41, *Hearn v Carlton* (1859), 28 L J (M C) 216, *R v Sleep* (1861), 8 Cox, C C 472, *Cole v James* (1871), L R 7 Q. B 135, in such a case the intent or state of mind must be affirmatively proved by the prosecution (*Nichols v Hall* (1873), L R 8 C P 322, *Small v Warr* (1882), 47 J P 20, *Sherras v De Rutzen*, [1895] 1 Q. B 918, *Derbyshire v Houston*, [1897] 1 Q. B 772), see also *R v Stoddart* (1909), 25 T L R 612, C O A.

(g) *Woodfall's Case* (1770), 20 State Tr 895 at p 919, *per* Lord MANSFIELD, C J. *R v Philippe* (1805), 6 East, 464.

(h) *R v Paraborough*, [1895] 2 Q. B 484, C O R, *R v Lynch* (1903), *per* Lord ALVERSTONE, C J, Official Report, 161. Thus, if a person utters a forged bill knowing that it is forged, and meaning that the bill should be taken as a genuine bill, the inevitable conclusion is that he intended to defraud (*R v Hill* (1838), 8 C. & P 274, *R v Cooks* (1838), *ibid* 582).

(i) It is a "universal principle that when a man is charged with doing an act of which the probable consequence may be highly injurious, the intension is an inference of law resulting from doing the act," see *R v Dixon* (1814), 3 M. & S 11 *per* Lord ELLENBOROUGH, C J, at p. 15, *R v Hucklin* (1868), L R 3 Q. B 360, at p 375, *Miles v Hutchings*, [1903] 2 K. B 714, and compare *R v Meade*, [1909] 1 K. B 895.

(k) E.g., by acting in self-defence or in the exercise of some legal duty or right; see p. 608, *post*.

(a) See p. 238, *post*.

(b) *R v Tolson* (1889), 23 Q. B. D. 168, C O R., *R v Prince* (1876), L. R. 2 C. C. R. 164, *Aberdare Local Board v Hammett* (1876), L. R. 10 Q. B.

**506.** There are certain offences in the prosecution of which proof of a particular intent or state of mind is not incumbent on the prosecution (c) In some of these cases the defendant may excuse himself by proving that his intent or state of mind was innocent (d). But in others, no such excuse is available (e)

The prosecution may prove, but are not bound to prove, the motive for a crime, and, even in cases where innocence of intention is a defence, innocence of motive is no defence (f) An act which

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rea not  
necessary.  
Motive.

162, see *Bank of New South Wales v Piper*, [1897] A. C. 383, P. C., at p. 389, and *infra* Under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 5, 6, 7, the defence of reasonable cause of belief is available in certain cases when the act is not morally innocent (see pp. 616, 617, 623, *post*)

(c) *E.g.*, indictable nuisances (see *R v Stephens* (1866), L. R. 1 Q. B. 702) In the case of a sale by a keeper of licensed premises of intoxicating liquor to a drunken person, proof of knowledge by the accused of the condition of the person is not necessary (*Gundy v Le Cocq* (1884), 13 Q. B. D. 207), where possession of unsound meat for the purpose of sale and intended for human food is shown, proof of knowledge by the accused of the condition of the meat is unnecessary (*Blaker v Tillstone*, [1894] 1 Q. B. 345, and see title FOOD AND DRUGS), in a prosecution for an assault on a constable in the execution of his duty, proof of knowledge of the accused that the constable was so acting is unnecessary (*R. v. Forbes* (1865), 10 Cox, C. C. 362, *R v Maxwell* (1909), 73 J. P. 176)

(d) In prosecutions for some of the offences under the Debtors Act, 1860 (32 & 33 Vict. c. 62), s. 11, the onus of proving the absence of fraudulent intention is expressly cast on the defendant (see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 354) So, in a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (2) (*Christie, Manson and Woods v Cooper*, [1900] 2 Q. B. 522, and see p. 568, *post*)

(e) Under this head fall many indictable nuisances, the procedure in which is only in form criminal (see *R v Stephens* (1866), L. R. 1 Q. B. 702) A prosecution for trespass in pursuit of game is also criminal in form, but has for its object the security of a civil right, in such a prosecution *bona fide* belief by the defendant that he was not a trespasser is no defence (*Morden v Porter* (1860), 7 O. B. (N. S.) 641, *Watkins v Mayor* (1875), L. R. 10 O. P. 662) There are a number of cases analogous to public nuisances, where an act is peremptorily forbidden and innocence of intention or mistaken belief is no defence (*R v Bishop* (1880), 5 Q. B. D. 259, C. C. R.) In prosecutions under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), a person who sells an adulterated or "altered" article of food may be convicted, although he does not know of the adulteration or alteration (*Betts v Armistead* (1888), 20 Q. B. D. 771, *Pain v. Boughtwood* (1890), 24 Q. B. D. 353, *Dyke v Gower*, [1892] 1 Q. B. 220, *Morris v Corbett* (1892), 56 J. P. 649, *Brown v Foot* (1892), 61 L. J. (M. C.) 110, *Parker v. Alder*, [1899] 1 Q. B. 20). In a prosecution under s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), which makes it an offence for a licensed person to sell intoxicating liquor to a child under fourteen except in a vessel properly corked or sealed, *bona fide* belief on the part of the licensed person that the vessel in which the liquor was sold was properly corked and sealed is no defence (*Brooks v Mason*, [1902] 2 K. B. 743) So mere possession of a prohibited article may be criminal without knowledge (see *R v Marsh* (1824), 2 B. & C. 717 (possession of game by carrier), *R v Woodrow* (1846), 16 M. & W. 404 (possession of adulterated tobacco by dealer)) Most of these cases where ignorance or innocence of intention is no defence are cases punishable by fines, and many of them are only punishable on summary conviction before magistrates.

(f) Intention is an operation of the will directing an overt act, motive is the feeling which prompts the operation of the will, the ulterior object of the person willing, *e.g.*, if a person kills another, the intention directs the act which causes death, the motive is the object which the person had in view, *e.g.*, the satisfaction of some desire, such as revenge etc (see Stephen, *History of the Criminal Law*, Vol. II., 110).

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is unlawful cannot in law be excused on the ground that it was committed from a good motive (g)

**SUB SECT 3** *Grounds of Defence and Exemptions from Criminal Liability*

**Mistake or**  
**Ignorance.**

**507** *Bona fide* mistake or ignorance as to matters of fact may be available as a defence (h) Ignorance of law cannot be set up as a defence even by a foreigner (i), although it may be a ground for the mitigation of sentence (k)

A continuous act or proceeding, not originally unlawful, commenced before the passing of a statute which prohibits it, cannot be treated as unlawful by reason of the passing of the statute, until a reasonable time has been allowed for the discontinuance of the act or proceeding, and in considering what is a reasonable time for such discontinuance the question whether a person is or is not ignorant of the passing of the statute or whether his ignorance is in the circumstances excusable may be taken into account (l)

In cases where a particular intent or state of mind is of the essence of an offence, a mistaken but *bona fide* belief by a defendant that he had a right to do a particular act may be a complete defence as showing that he had no criminal intent (m)

**Accident.**

**508** The defence of accident or "inadvertence without culpability" is available in all those cases in which a particular intent or state of mind is of the essence of the offence A person who is accused of such an offence may excuse himself by showing that, although he did the act or made the omission which is the subject

(g) Thus, to a charge of publishing an obscene libel, if the publication is in fact obscene, it is no defence that the defendant had a good motive, e.g., to expose the evils of the confessional (*R v Hicklin* (1868), L.R. 3 Q.B. 360, *Steele v Brannan* (1872), L.R. 7 Q.P. 281) In a prosecution for an indecent assault or abduction it is no defence that the defendant's motives were pure, e.g., to draw the attention of the public to the prevalence of alleged evils (*R v Jurett*, *Times*, 9th November, 1885, p. 3, 11th November, 1885, p. 3, C.C.C. Sessions Papers, October, 1885), and see p. 622, *post* If a person removes a corpse from a grave without lawful authority, it is no defence to such a person that he acted from pious and laudable motives (*R v Sharpe* (1857), Dears. & B. 160) And if a duty is imposed by law and the breach of the duty is made punishable, a defendant who is charged with the breach cannot set up as a defence that he has a "conscientious objection" to perform the duty which was imposed (*R v Downes* (1875), 1 Q.B.D. 25, C.C.R., *R v Senior*, [1899] 1 Q.B. 283, C.C.R.), but see the Vaccination Act, 1898 (61 & 62 Vict. c. 49), and title PUBLIC HEALTH

(h) 1 Hale, P.O. 42, 4 Bl. Com. 27, *Levell's Case* (1639), Cro. Car. 538, *R v Petch* (1909), 25 T.L.R. 401

(i) *R v. Keop* (1836), 7 O. & P. 466, *Barronet's Case* (1852), 1 E. & B. 1 As to alien enemies, see p. 273, *post*

(k) *R v Crawshaw* (1860), Bell, C.C. 303

(l) *Burns v Novell* (1880), 5 Q.B.D. 444, C.A., *per* BAGGALLAY, L.J., at p. 454, see *Basley's Case* (1800), Russ. & Ry. 1

(m) 2 East, P.O. 659, *R v Hall* (1828), 2 Russell on Crimes, 216, 3 O. & P. 406, *R v Knight* (1781), 2 East, P.O. 510, *R v Twoess* (1879), 14 Cox, C.C. 327; *R v Butler* (1908), 25 T.L.R. 73, C.O.A. See the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 52, which makes it an offence wilfully and maliciously to commit any damage etc. upon any real or personal property, but excepts all cases where a person acts under a fair and reasonable supposition that he had a right to do the act complained of. See *Watkins v Mayor* (1876), L.R. 10 Q.B. 602. S. 52 only relates to summary proceedings

of the charge, he did it while he was acting lawfully and through inadvertence and without culpable negligence (*n*).

SECT. 1.  
The Nature  
of Crime in  
General.  
—  
Consent.

**509** In some cases where the criminal act charged consists of trespass to the person or to property, the consent of the person injured is a complete defence. Thus, to constitute an assault an act must be against the consent of the person to whom it is done (*a*), and to constitute larceny property must be taken *inuito domino* (*b*).

Consent is no defence where it has been obtained by fraud or threats or violence (*c*). In the case of children and others of defective intellect, submission to an unlawful act in ignorance of its nature does not amount to consent (*d*). As regards some crimes there is express statutory provision that the consent of children under a certain age is not to be available as a defence (*e*).

There are many other crimes as to which the consent of the person injured is no defence. Thus, it is not in the power of anyone to give a consent, effectual to bar a criminal prosecution, to an act which amounts to or has a direct tendency to create a breach of the peace (*f*), or to an act which amounts to mayhem (*g*) or to murder (*h*).

## SECT. 2—Criminal Capacity.

### SUB SECT. 1—Infancy

**510** Criminal liability cannot be imputed to an infant under the age of seven years. There is an irrebuttable presumption of law that a child under that age is incapable of committing a crime (*i*). Infants.

If an infant between the age of seven and fourteen years commits an act which in the case of a person over fourteen years of age would amount to a felony or to some other offence of which *animus malus* is an essential ingredient, there is a presumption of law that the infant had not sufficient capacity to know that what he did was wrong, but this presumption may be rebutted by evidence, and on such evidence being given the infant may be criminally liable. Knowledge that he was doing what was wrong cannot be presumed from the mere commission of the act, but may

(*a*) *v. Hale*, P O 38, 4 Bl Com 26, *Ratting v Bristol and Exeter Rail. Co* (1861), 3 L T 665, *R v Noakes* (1866), 4 F & F 920, *R v Finney* (1874), 12 Cox, C O 625.

(*a*) *R v Guthrie* (1870), L R 1 C O R 241, *per BOVILL, C J*, at p 243, *R v Coney* (1882), 8 Q B D 534, C O R, *per HAWKINS, J.*, at p 553, *R v Lock* (1872), L R 2 C O R 10, *per BRETT, J.*, at p 13.

(*b*) See *McDaniel's Case* (1755), 19 State Tr 746. As to cases where the taking possession was not against the will of the owner, but the prisoner had from the beginning an intent to steal, see p 636, *post*.

(*c*) See pp 606, 612, *post*.

(*d*) *R v. Lock* (1872), L R 2 C. O R 10, *R v. Barratt* (1873), L R 2 C O R 81.

(*e*) See pp. 615—619, *post*.

(*f*) *R v Coney*, *supra*.

(*g*) See p. 607, *post*.

(*h*) If two persons agree to commit suicide together, and one accordingly kills himself but the other recovers, the survivor is guilty of murder (see p 573, *post*).

(*i*) 1 Hale, P O 27, 4 Bl Com. 23, *Marsh v Leeder* (1863), 14 C B (N. s.) 636. See Summary Jurisdiction Act, 1879 (42 & 43 Vict. c 46), s 10.

**SEC. 2**  
**Criminal**  
**Capacity.**

**Presumption**  
**in cases of**  
**rape.**

be proved by the circumstances attending the act and the manner in which it was done (*k*).

There is, however, an irrebuttable presumption that a boy under the age of fourteen years is incapable of having carnal knowledge (*l*); he therefore cannot be convicted of committing rape (*m*), nor can he be convicted of the felony of having unlawful carnal knowledge of a girl under the age of thirteen, nor can he be convicted of the attempt to commit either of these crimes (*n*). Evidence cannot be given that a boy under fourteen is physically capable of committing either of these crimes (*o*).

**Persons over**  
**fourteen.**

**511** All persons over the age of fourteen years are presumed to possess a sufficient degree of reason to be responsible for crimes, unless the contrary is proved (*p*). Therefore, an infant over that age is in most respects, as regards criminal liability, in the same position as a person of full age (*q*), except when a crime is such that it can only be committed by a person of full age (*r*). He may be guilty of larceny as a bailee, although he cannot enter into a contract of bailment (*s*).

(*k*) *E.g.*, by evidence of design, concealment, exceptional ferocity (1 Hale, P C 25, 26, Fitzherbert, Grand Abridgment, tit Corone, 57, *R v York* (1748), Post 70, *R v Owen* (1830), 4 C & P 236, *R v Wild* (1835), 1 Mood C O 452, *R v Smith* (1845), 1 Cox, C O 260, *R v Vampulw* (1862), 3 E. & F 520, *R v Kershaw* (1902), 18 T L R 307)

(*l*) Compare the rule that no male under the age of fourteen can contract a valid marriage. See title HUSBAND AND WIFE

(*m*) *R v Groombridge* (1836), 7 C & P 582. But he can be found guilty of being a principal in the second degree, when he assists a person over the age of fourteen to commit a rape (*R v Eldershaw* (1828), 3 C & P 396, *per VAUGHAN*, B). As to rape, see p 611, *post*, and as to unnatural offences, see p 540, *post*.

(*n*) *R v Waiter*, [1592] 2 Q B 600, C C R, *R v Williams*, [1593] 1 Q B 320, C C R. But if he is charged with committing a rape, he may be found guilty of a common or indecent assault (*R v Brimlow* (1839), 9 C & P 386, Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 9), and if he is charged with the felony of having unlawful carnal knowledge of a girl under thirteen, he may be found guilty of an indecent assault (*R v Williams, supra*). It is doubtful whether he can be found guilty of an assault with intent to commit a rape (see *R v Eldershaw* (1838), 3 C. & P 396, *R v Philips* (1839), 8 C & P 736, *R v Wiste, supra*, *R v Williams, supra*).

(*o*) *R v Philips, supra*, *R v Jordan* (1839), 9 C & P 118

(*p*) *R v Oxford* (1840), 9 C & P 525, *M'Naghten's Case* (1843), 10 Cl & Fin 200, H L

(*q*) 1 Hale, P C 25. It is doubtful whether an infant can be indicted for a forcible entry or for a misprision (1 Hale, P C 21, 4 Bac. Abr, tit Infancy H, 7th ed, 352). It seems that if a person is liable *ratione tenuræ* to repair a highway, infancy is no defence to an indictment for non repair, and that this applies even to infants under the age of fourteen (*R v Sutton* (1835), 3 Ad & El. 697, 2 Co. Inst. 703, s 6). The statement in 4 Bl. Com 22 that "the law of England does in some cases privilege an infant under the age of twenty-one as to common misdemeanours, so as to escape fine, imprisonment and the like, particularly in cases of omissions in not repairing a bridge or a highway and other similar offences," is not consistent with the passage in 1 Hale, P. C. 20, 21, 22, which Blackstone cites as an authority for his statement, see *R v Sutton, supra*, at pp. 601—602

(*r*) *E.g.*, an infant cannot be adjudicated a bankrupt, except, perhaps, on a debt for necessaries (see title BANKRUPTCY, Vol. II, p 11). An infant cannot be convicted of criminal offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 12 (see *R v Wilson* (1879), 5 Q B D 28, C C R.)

(*s*) *R v McDonald* (1835), 15 Q. B. D. 323, C. C. R.

SUB-SECT. 2.—*Insanity.*SECT. 2  
Criminal  
Capacity.  
Insanity.

**512.** Where it can be shown that a person at the time of his committing or omitting an act, the commission or omission of which would otherwise be criminal, was labouring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the act or omission, or as not to know that he was doing what was wrong, then such a person is not in law responsible for his act (a)

The question whether a prisoner, at the time when he committed an act or made an omission, was or was not insane so as not to be responsible according to law for his actions is a question of fact which the jury must determine under the direction of the judge (b).

If the person accused is proved to have had, at the time of the act or omission charged, no mind at all, or to have been suffering from delirium, then the jury may properly conclude that he was not responsible in law for his actions (c)

The defence of insanity may be set up, when the accused is only partially insane (d) If a person is only partially insane, and it is proved by evidence that he suffered from delusions, then he is for the purposes of criminal responsibility to be considered in the same situation as though the facts to which his delusions relate had really existed (e)

If the facts which he supposes in his delusion to exist would justify the act or omission, if they had really existed, then he is to be excused; if they would not, then he is responsible at law for his actions (e).

(a) *M'Naghten's Case* (1843), 10 Cl. & Fin. 200, H. L., *R. v. Offord* (1831), 5 O. & P. 168, *R. v. Goode* (1837), 7 Ad. & El. 536, *R. v. Oxford* (1840), 9 O. & P. 525, *R. v. Higginson* (1843), 1 Car. & Kir. 129, *R. v. Layton* (1849), 4 Cox, C. C. 149, *R. v. Richards* (1856), 1 F. & F. 87, *R. v. Davies* (1858), 1 F. & F. 69, *R. v. Tounley* (1863), 3 F. & F. 839, *R. v. Law* (1864), 2 F. & F. 836, *R. v. Vyse* (1862), 3 F. & F. 247, *R. v. Leigh* (1866), 4 F. & F. 915, *R. v. Dron* (1869), 11 Cox, C. C. 311, *R. v. Southey* (1865), 4 F. & F. 54, *R. v. Pate* (1850), 8 St. Tr. (N. S.) 1

(b) The question of insanity being one of fact, there was, before the passing of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), no legal authority on the subject other than the summings-up of the judges (see the cases collected in note (a), *supra*, and the answers of the judges in *M'Naghten's Case*, *supra*); these answers were given to the House of Lords extra-judicially, and their authority is doubtful (see Stephen, *History of the Criminal Law*, Vol. II, p. 163). One of these answers (the 5th) was criticised by ALDERSON, B., in *R. v. Frances* (1849), 4 Cox, C. C. 57. An appeal now lies to the Court of Criminal Appeal on the ground of the insanity of the defendant, see p. 436, *post*.

(c) See *R. v. Tounley* (1863), 3 F. & F. 839, *per* MARTIN, B., at p. 846.

(d) Insanity may be either congenital and permanent (*dementia naturalis*)—this is the state of idiots whose mental faculties have never grown—or it may be the darkening of mental faculties which have reached a certain stage of growth (*dementia accidentalis*) (1 Hale, P. C. 29). This latter variety of the disease may be total or partial, permanent or occasional. In most cases of this kind the disease is partial or occasional, and it is in reference to these cases that difficulties arise in determining whether a person is responsible in law for his actions (Taylor, *Medical Jurisprudence*, 5th ed., Vol. I., p. 878). Moreover, insanity is a disease of the mind, and has often no other objective symptoms than the actions of the person suffering from its influence. See title LUNATICS AND PRISONERS OF UNSOUND MIND.

(e) See the opinion of the majority of the judges in *M'Naghten's Case*, *supra* (4th question). Compare *R. v. Pate* (1850), 8 St. Tr. (N. S.) 1, *per* ALDERSON, B., at p. 47.



## SECT. 2.

**Criminal Capacity.****Moral insanity.**

**513** To show that a person was, at the time when he committed an act or made an omission, insane so as not to be responsible in law for his actions, proof must be given of the existence of disease of the mind or intellectual insanity neither "moral insanity," i.e., the state when the intellectual faculties are sound and the moral faculties diseased (*f*), nor a mere "uncontrollable impulse of the mind" co-existing with the full possession of the reasoning faculties, is any defence (*g*)

**Onus of proof**

**514.** The onus of establishing insanity is on the accused; affirmative evidence must be given by medical or other witnesses showing that he was suffering from mental disease at the time or shortly before or after the act or omission charged (*h*)

The mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity (*i*) But if there is other evidence of insanity, such a fact may be of importance as helping to prove insanity (*k*)

**Special verdict.**

**515** Insanity is not an absolute defence in the case of a person charged with a crime If insanity is proved in such a case, a jury cannot now, as they could formerly, acquit the accused, but they may bring in a special verdict that he was guilty of the act or omission charged against him, but was insane so as not to be responsible according to law for his actions, at the time when the act was done or the omission made The result of this verdict is that the court orders the accused to be kept in custody as a criminal lunatic, till the King's pleasure is known (*l*).

SUB-SECT 3—*Drunkenness***Delirium tremens**

**516** A person suffering from *delirium tremens*, which so affects his mind that he is not conscious of the nature of an act which he commits, who does a criminal act without knowing that it is wrong, is entitled, when on his trial for such an act, to the same verdict as if he had been suffering from insanity (*m*)

**Drunkenness**

**517** A person who becomes drunk as the result of his own voluntary act, and while drunk commits a crime, is not excused for

(*f*) *R v Burton* (1863), 3 F & F 772

(*g*) *R v Barton* (1848), 3 Cox, C O 275

(*h*) Expert evidence is not indispensably necessary (*R v Dart* (1878), 14 Cox, C O 143) As to the nature of the questions which it is permissible to ask a medical witness on the subject of insanity, see *Wright's Case* (1821), Russ & Ry 408, *R v Searle* (1831), 1 Mood & R 75, *M'Naghten's Case* (1843), 10 Cl & Fin 200, H L (5th question), *R v Frances* (1849), 4 Cox, C O 57

(*i*) *R v Barton* (1848), 3 Cox, C O 275, *R v Haynes* (1859), 1 F. & F 600

(*k*) *R. v. Vyes* (1862), 3 F. & F 247

(*l*) Lunal of Lunatics Act, 1863 (46 & 47 Vict. c 39), s 2, and see title LUNATICS AND PERSONS OF UNSOUND MIND The defence of insanity is in practice generally limited to those charges in respect of which the penalty of death may be inflicted (see *R. v. Reynolds* (1843), Taylor, Medical Jurisprudence, 5th ed., Vol. I., p. 870) As to the procedure in case of a prisoner being insane after his committal or at the time of his trial, see p. 354, post

(*m*) *R. v. Davis* (1881) 14 Cox, C O 563 A person suffering from temporary delirium caused by some bodily disease would, it seems, be in the same position.



SMOKE  
Criminal  
Capacity.

the crime by reason of his drunkenness alone (u), for a person, although drunk, may be capable of forming an intention and therefore of committing an act. But a person may by drunkenness be rendered entirely incapable of forming an intention, and drunkenness may therefore, even though voluntary, sometimes be used as a defence for the purpose of rebutting the presumption of a criminal intention which would otherwise arise from an act; such presumption is deemed to be rebutted, where it is shown that the accused's mind was so affected by drink that he was incapable of knowing that what he was doing was dangerous or wrongful (o).

SUB-SECT 4 — *Coercion*

518. A person compelled by physical force to do an act which, if voluntarily done, would be a crime, is free from criminal responsibility, but the person compelling him is criminally liable (p). Compulsion.

The use of threats inducing a person, from present fear of death, to join with rebels is, it seems, an excuse, so long as the person is under the influence of such fear (q). Subject to this exception, a person who commits a crime when influenced by threats or "moral force," or by the confinement of his person, or by violence not amounting to actual compulsion, is not excused (r). Threats.

The mere fact that a person does a criminal act in obedience to the order of a duly constituted superior does not excuse the person who does the act from criminal liability, but the fact that a person does an act in obedience to a superior whom he is bound to obey, might exclude the inference of malice or wrongful intention which might otherwise follow from the act (s). Obedience to authority

(u) *Pearson's Case* (1835), 2 Lew C C 144. *Aliter* of a person who is made drunk by the stratagem or fraud of another (*ibid.*, per PARK, J., at p 145).

(o) See *R v. Meade*, [1909] 1 K B 895, *R v. Grindley* (1819), 1 Russell on Crimes, 6th ed., 144, *Burrow's Case* (1823), 1 Lew C C 75, *Rennie's Case* (1823), 1 Lew C C 76, *Marshall's Case* (1830), 1 Lew C C 78, *Goodier's Case* (1831), cited in *Marshall's Case*, *supra*, *Pearson's Case* (1835), 2 Lew C C 144, *R v. Carroll* (1835), 7 C & P 145, per PARK, J., at p 147, *R v. Meakin* (1836), 7 C & P 297, *R v. Thomas* (1837), 7 C & P 817, *R v. Cruise* (1838), 8 C & P 541, per PATTISON, J., at p 546, *R v. Monkhouse* (1849), 4 Cox, C C 55, *R v. Doherty* (1887), 16 Cox, C C 308, *R v. Moore* (1852), 3 Car & Kir 319, *R v. Doody* (1854), 6 Cox, C C 463. A person who, unconsciously, in a state of drunken sleep does an act which causes the death of another is not criminally liable for the act (*R v. Byron* (1863), Taylor, Medical Jurisprudence, 5th ed 814).

(p) 1 Hale, P C 434; and see p. 234, *ante*.

(q) 1 East, P C 70. The fear of having houses burnt or goods spoiled is no excuse (*MacGrowth's Case* (1746), 18 State Tr 391).

(r) See 1 East, P C 70, *R v. Tyler* (1838), 8 C & P 616. Compulsion from necessity arising from hunger is no excuse for a crime (*R v. Dudley* (1884), 11 Q B D 273). As to necessity as a justification, see *R v. Stratton* (1779), 21 State Tr 1046, at pp 1223, 1230. As to acts done under martial law, see *post*, p 271, note (c). As to acts done by a servant in cases under the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), see s. 19 (3) of that Act.

(s) 1 Hale, P C 43, 44. If the law laid down in *Axtell's Case* (1660), Kel. 13, *Cook's Case* (1660), 5 State Tr. 1077, 1113, and *Vane's (Sir Henry) Case* (1662), Kel. 14, is correct or applicable to the present time, obedience to a *de facto* government, which is not royal, does not necessarily afford a defence. The statute (1495) 11 Hen. 7, c. 1, excuses the obedience paid to a *de facto* king,

## SECT. 2.

**Criminal  
Capacity.****Presumption  
of coercion.**SUB-SECT. 5—*Husband and Wife*

519 If husband and wife act together in committing certain crimes and the wife acts in the presence of her husband, there is a presumption that the wife acted under the coercion of her husband, and if she is tried for such an act, she is *prima facie* entitled to an acquittal (t).

This rule applies to larceny, burglary (a), robbery with violence (b), receiving stolen goods (c), felonious wounding (d), and uttering counterfeit coins or forged notes (e).

The rule does not apply to murder or treason (f), or to a mere assault (g), or false swearing (h), or to such offences as keeping a disorderly house (i) or a gaming house (l), or to acts committed by a wife in the absence of her husband (l).

The presumption is *prima facie* only, and may be rebutted by evidence that the wife was the instigator of the act or the more active party, or that the husband, though present, was incapable of coercing her as being the weaker of the two or a cripple or bed-ridden (m).

SUB-SECT. 6—*Privileged Persons***The King  
exempt from  
criminal  
jurisdiction**

520 The King is exempt from all criminal liability. As he can do no wrong, he cannot be called to account criminally any

but does not, according to those cases, apply where there is no king *de facto*. A soldier who in obedience to the order of a superior officer did an act which would otherwise be criminal would probably be excused, if the soldier might fairly suppose that the officer had good reasons for giving the order (see Stephen, *History of Criminal Law*, Vol. I, 205), as to disobedience by a soldier to a lawful command of a superior officer, see *Army Act*, 1881 (44 & 45 Vict. c. 58), s. 9.

(t) 1 Hale, P. C. 44, *Anon.* (1665), Kel. 31, *R. v. Hamilton* (1784), 1 Leach, 318, *R. v. Archer* (1826), 1 Mood. C. C. 143, *R. v. Conolly* (1829), Matthews, Digest of Criminal Law, 262, *R. v. Price* (1837), 8 O. & P. 19, *R. v. Smith* (1858), Dears & B. 553, *R. v. Torpey* (1871), 12 Cox, C. C. 45, *R. v. Dykes* (1886), 15 Cox, C. C. 771. As to proof of marriage in such a case, see p. 369, n., post.

(a) 1 Hale, P. C. 44.

(b) *R. v. Torpey*, *supra*, *R. v. Dykes*, *supra*.

(c) *R. v. Archer*, *supra*, *R. v. Matthews* (1850), 1 Den. 596, *R. v. Wardroper* (1860), Bell, C. C. 249.

(d) *R. v. Smith*, *supra*.

(e) *R. v. Conolly*, *supra*, *R. v. Price*, *supra*, *R. v. Atkinson* (1814), 1 Russell on Crimes, 6th ed., 147, 159.

(f) 1 Hale, P. C. 44; but see *R. v. Alison* (1836), 8 O. & P. 418, at p. 423, 1 Russell on Crimes, 6th ed., 146, n.

(g) *R. v. Ingram* (1712), 1 Salk. 384, *R. v. Cruse* (1838), 8 C. & P. 541, but see *R. v. Torpey*, *supra*, at p. 49.

(h) *R. v. Dicks* (1781), 1 Russell on Crimes, 6th ed., 147, n.

(i) *R. v. Williams* (1712), 1 Salk. 384.

(k) *R. v. Dixon* (1716), 10 Mod. Rep. 335.

(l) *Hammond's Case* (1787), 1 Leach, 444, *R. v. Hughes* (1813), 2 Lew. C. C. 229; *R. v. Morris* (1814), Russ. & Ry. 270; *R. v. Robson* (1861), 1 Le. & Ca. 93, *Brown v. A-G for New Zealand*, [1896] A. C. 234, P. O.

(m) 1 Russell on Crimes, 6th ed., 164, n. *R. v. Pollard* (1838), 8 C. & P. 553, n. The relationship of husband and wife affects the criminal liability of the wife, and even of the husband in some cases. Thus, husband and wife being in law one person, a conspiracy by them alone to do an unlawful act is not a criminal conspiracy for which they can be indicted, although husband and wife

more than he can civilly; no court has any coercive power over him (*n*).

By the comity of nations a reigning sovereign of another State is treated as exempt from the criminal as well as the civil jurisdiction of all other countries (*o*).

No one but a sovereign is personally exempt in England from criminal jurisdiction to which all persons who reside in the country, whether subjects or aliens, are liable (*p*).

SECT. 2.  
Criminal  
Capacity.

Reigning  
sovereigns  
of foreign  
countries.

**521.** The exemption of ambassadors of foreign States, their servants and retinue, from the criminal jurisdiction of the country to which they are accredited, though asserted by writers on international law (*q*), is not sanctioned by the English courts or by any authority on English criminal law (*r*).

Ambassadors.

**522.** The privileges of Parliament do not apply to criminal matters, and members of either House are subject to the ordinary course of criminal justice (*s*). But no member of either House of Parliament can be made criminally liable for anything said by him in his place in the House while the House is sitting (*t*).

Members of  
Houses of  
Parliament.

may be indicted for conspiring with other persons (1 Hawk. P. O. c. 27, s. 8; *R v Cope* (1719), 1 Stra. 144). A married woman cannot be convicted of being accessory after the fact to her husband's felony (see p. 256, *post*), or of receiving stolen goods from her husband (p. 679, *post*). There cannot be a criminal prosecution for a libel by a husband on his wife, or *vice versa* (see title LIBEL AND SLANDER), and only in certain events can either be convicted of stealing the goods of the other (p. 634, *post*). As to the husband giving evidence against his wife, and *vice versa*, see p. 405, *post*.

(*n*) *R v Cook* (1660), 5 State Tr. 1077, 1113, *Tobin v. R.* (1864), 33 L. J. (C. P.), *per* ERLE, O. J., at p. 205.

(*o*) Wheaton, International Law, 4th ed., p. 153, *The Parlement Deige* (1880), 5 P. D. 197, C. A., *Mighell v Sultan of Johore*, [1894] 1 Q. B. 149, C. A. A. deposed, exiled, or fugitive sovereign who takes refuge in England would, it seems, be liable to the criminal jurisdiction of the country (see the *Proceedings against Mary Queen of Scots* (1586), 1 State Tr. 1161).

(*p*) As to the territorial limits of criminal jurisdiction, see p. 272, *post*. As to acts done in England by alien enemies, see note (*h*), p. 273, *post*.

(*q*) Wheaton, International Law, 331. And see title CONSTITUTIONAL LAW, Vol. VI., p. 429.

(*r*) See 1 Hale, P. C. 99; *Don Pantaleon Sa's Case* (1654), 5 State Tr. 461; *Frost* 187, *Owen's Case* (1615), 2 State Tr. 881, *Magdalena Steam Navigation Co v Martin* (1859), 28 L. J. (Q. B.) 310, *per* WIGHTMAN, J., at p. 313, *Law Magazine and Review*, 4th Series, Vol. XX., 43. The Diplomatic Privileges Act, 1708 (7 Ann. c. 12), does not, it seems, apply to criminal process.

(*s*) See *Bradlaugh v Gossett* (1884), 12 Q. B. D. 271, *per* STEPHEN, J., at p. 283, *Elliot's Case* (1829), 3 State Tr. 293, *Jay and Topham's Case* (1869), 12 State Tr. 822, *Burdett v Abbot* (1811), 14 East, 1, (1817) 5 Dow, 185, H. L. The privilege of members of Parliament from arrest does not apply to criminal process (*Long Wellesley's Case* (1831), 2 Russ. & M. 639, 666, *Erskine May*, Parliamentary Practice, 11th ed., 120).

(*t*) See stat. (1612) 4 Hen. 8, c. 8. "The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament" (Bill of Rights, 1 Will. & Mar., sess. 2, c. 2). So members of Parliament are not either civilly or criminally liable to the jurisdiction of the ordinary courts for a conspiracy to deceive Parliament by making false speeches in Parliament (*Ex parte Wason* (1869), L. R. 4 Q. B. 573).

**SECT. 2.**  
**Degrees of**  
**Criminal**  
**Liability.**

**SECT. 3.—Degrees of Criminal Liability.**

**SUB SECT. 1 —Classification of Crimes**

**523** Crimes are divided into three classes—treasons, felonies, and misdemeanours

**Treason.**

The name treason is given to certain crimes which are more particularly directed against the safety of the Sovereign and the State (a).

**Felonies**

All indictable crimes below the degree of treason are either felonies or misdemeanours (b)

Felonies are those crimes which are such by common law or have been made such by statute

**Misde-  
meanours**

All crimes which are not treasons or felonies are misdemeanours either by common law or by statute (c)

(a) As to treason, see title CONSTITUTIONAL LAW, Vol VI, p 345, and p 450, *post*

(b) Offences created by statute and made punishable only on summary conviction are sometimes spoken of as misdemeanours (see *Du Cros v Lambourne*, [1907] 1 K B at p 44, but see *Tomlin's Law Dictionary*, title Misdemeanour)

(c) The most important points of difference between treasons, felonies, and misdemeanours are as follows —(1) *Accessories* —In felonies a distinction is drawn between principals and accessories (see p 248, *post*), but there is no such distinction either in treason or in misdemeanours (2) *Misprision* —A person who conceals a treason or felony without consenting to it commits the offence of misprision of treason or felony (see p 248, *post*), there is no such offence in respect of a misdemeanour (3) *Compounding a Felony* —It is a criminal offence to compound a felony, i.e., to agree not to prosecute (see p 503, *post*), but an agreement not to prosecute for a misdemeanour, though unlawful in many cases (see *Collins v Blanton* (1767), 1 Smith, L. C., 11th ed., 369) is not criminal, unless it amounts to a conspiracy to obstruct or defeat the course of justice (see Stephen, *History of Criminal Law*, Vol. I, p 502, and see p 504, *post*) (4) *Arrest*. —If a treason or a felony has been committed, anyone may without a warrant arrest a person against whom there is reasonable ground of suspicion (2 Co Inst. 52, see p 296, *post*), a constable may arrest anyone whom he has reasonable ground to suspect of having committed, or being about to commit, a felony (*Beckwith v Philby* (1827), 6 B & C 635) In cases of misdemeanour, with some exceptions, there is no power to arrest without a warrant (see p 298, *post*) (5) *Bail* —A person accused of treason or felony has no right to be bailed, but the court which has jurisdiction to grant bail may exercise its discretion and grant or refuse bail, a person accused of misdemeanour has an absolute right to bail, if he applies to the High Court of Justice under the Habeas Corpus Act, 1879 (31 Car. 2 c. 2) (*R v Badger* (1843), 4 Q. B. 468, *Lanford v Fitzroy* (1848), 13 Q. B. 240, at p 246, *R v Spilsbury*, [1898] 2 Q. B. 615, at p 622, and see *Re Frost* (1888), 4 T. L. R. 767), a person accused of certain misdemeanours had formerly a right to be bailed by justices of the peace, but now there does not seem any such right except in the case of charges for the non-repair of highways or bridges A person accused of treason can only be bailed by an order of a Secretary of State or of the High Court or of a judge of the High Court in vacation (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23, Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34, Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 19). A person accused of felony or misdemeanour may be bailed by the justices of the peace before whom he is brought or by the court that tries him, or by a judge of the High Court in chambers (see p 323, *post*) (6) *Copy of Indictment and List of Witnesses* —A person accused of high treason has a right to the delivery ten days before trial of a copy of the indictment and a list of the witnesses against him (Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 7, Treason

SUB-SECT 2 —*Principals and Accessories*

## SECT. 3.

**Degree of Criminal Liability.****Degree of complicity**

**524** All who take part in a crime with a guilty intent are criminally liable, whether they are the actual perpetrators of the crime or whether, not being the actual perpetrators, they are present aiding and abetting when it is committed, or whether, though

Act, 1708 (7 Ann c 21), s 14, *R v Frost* (1839), 4 State Tr (N s) 85). In prosecutions for misdemeanour the defendant, it seems, is entitled to a copy of the information or indictment (Pleading in Misdemeanour Act, 1819 (60 Geo 3 & 1 Geo 4, c 4), s 8, *Twyn's Case* (1683), 6 State Tr 518). A person accused of felony has no right to a copy of the indictment (*Proceedings against the Five Popish Lords* (1685), 7 State Tr 1218, at p 1243, *Fitzharris's Case* (1681) 8 State Tr 241, 258, *Rosewell's Case* (1684), 10 State Tr 266, *Preston's (Viscount) Case* (1691), 12 State Tr 658, *R v Dowling* (1848), 3 Cox, (1) O 509, *R v Mitchell* (1848), 3 Cox, O O 1, see 1 Lew O O 205, n, *Frost* 228, 2 Hale, P O 236, 2 Hawk P O, 8th ed., 557). The modern practice, however, is to allow the legal advisers of an accused person to inspect the indictment (*R v Dowling* (1849), 7 State Tr (N. s) 381). As to the right of all persons under trial to copies of depositions, see p 322, *post* (7) *Trial* -- (i) Challenges of jurors. A person in most cases of high treason may peremptorily challenge thirty-five jurors (Treason Act, 1695 (7 & 8 Will 3, c 3), s 2), in murder and all other felonies and in some treasons (compassing the King's death and attempts against the person of the King) the person accused may peremptorily challenge twenty jurors (Juries Act, 1825 (6 Geo 4, c 50), s 29, *Gray v R* (1814), 6 State Tr (N s) 117, see p 359, *post*). In misdemeanours there is no right of peremptory challenge, but the defendant may challenge jurors for cause (*Reading's Case* (1679), 7 State Tr 259, 265, *Cellier's Case* (1680), 7 State Tr 1183, *Oates's Case* (1685), 10 State Tr 1080). When a person accused of felony is arraigned and pleads not guilty, the prisoner is told by the clerk of arraigns before the jury are sworn that, if he wishes to challenge them or any of them, he must do so as they come to be sworn. In trials for felony the jurors are consequently sworn separately, whilst in trials for misdemeanour the jurors are often sworn in batches. (ii) A person accused of felony must during his trial be at the bar of the court, i. e., in "the dock" as it is commonly called in most courts, *aliter* of a person accused of a misdemeanour (*R v St George* (1840), 9 C & P 483, 485, *R v Douglas* (1841), Car & M 193, at p 194, *R v Zulueta* (1843), 1 Car & Kir 215, but see *Horne Tooke's Case* (1794), 25 State Tr 1, 6). (iii) The form of the oath administered to the jury on the trial of a person for felony is different from the form in the case of a misdemeanour (see p 362, note (i), *post*). (iv) In an indictment for high treason the prisoner may be charged with different kinds of treason in different counts, an indictment ought not to charge a defendant with several different felonies, although it may charge the same felony in different ways. An indictment which joins a count for felony with a count for misdemeanour is bad (see p 342, *post*). (v) A person who in the course of committing a felony causes the death of another may be guilty of murder, while a person who in the course of committing a misdemeanour causes the death of another without the intention of killing him is only guilty of manslaughter (see p. 579, *post*). (8) *Punishment* — Treason, murder, piracy, and setting fire to the King's ships or arsenals (see p 409, *post*) are punishable with death, but no misdemeanour is punishable with death. (9) *Consequences of Conviction* — If a person who is found guilty of treason or felony and is sentenced to death or penal servitude or any term of imprisonment with hard labour, or exceeding twelve months, holds any of certain offices or places or is entitled to certain pensions etc., he forfeits his office, place, pension etc. (see p 428, *post*). A person convicted of treason or felony may be ordered to make compensation for any loss suffered by a person aggrieved through or by means of the felony (see p 449, *post*). A person who has been convicted of treason or felony is, while he is under sentence and suffering punishment, disqualified from suing in any action or from alienating or charging his property, and an administrator of his property may be appointed (see p 439, *post*).

**SECT. 3**  
**Degrees of**  
**Criminal**  
**Liability**

absent when the crime is committed, they had a share in procuring, inciting, counselling, or assisting others to commit the crime (*d*).

In felonies, but not in treasons or misdemeanours, a distinction is drawn between principals, that is, those who are present with a guilty intent, when a crime is committed, and accessories before the fact, that is, those who without being present at the time when a crime is committed, procure its commission or plan or aid in or encourage its execution. In treasons and misdemeanours all persons who aid or abet in the commission of the crime are regarded as principals, whether they are present or absent when it is committed (*e*).

A person who, with knowledge that treason or felony has been committed, comforts and assists the criminal after the crime has been committed is also guilty of a crime.

Those who comfort and assist a criminal after a felony has been committed are liable as accessories after the fact (*f*).

Those who comfort and assist a person who has committed treason and know of the crime are deemed principals (*g*).

A person who merely comforts and assists one who has committed a misdemeanour is not guilty of a crime (*h*).

**Principals**

**525** All persons who are present, when a felony is committed, and who take a part in the actual perpetration of the offence, or aid and abet those who perpetrate it, are called principals (*i*). Persons who are absent when a felony is committed, but take part in procuring or contriving it, are called accessories before the fact (*j*).

**Principals in**  
**first degree**

**526** There are two kinds of principals—principals in the first degree and principals in the second degree. Those who actually take part in a crime are called principals in the first degree (*k*) and those who are present aiding and abetting, but take no actual part in it, are called principals in the second degree. The distinction between principals in the first degree and principals in the second degree applies to misdemeanours as well as to felonies, but in

(*d*) *Fost* 341, 317.

(*e*) *Fost* 341, 1 *Hale*, P C 613, *R v Clayton* (1843), 1 *Car & Kir* 128, *R v Moland* (1843), 2 *Mood. C C* 276, *R v Greenwood* (1852), 2 *Den* 453, *R v. Burton* (1875), 13 *Cox*, C C 71, *R v. Waudby*, [1895] 2 *Q B* 482, C C R.

(*f*) 1 *Hale* P C 618, and see p. 246, *post*.

4 *Bl Com* 35.

1 *Hale*, P C 618.

All present at the time of committing an offence are principals, though one only acts, if they are confederates and engaged in a common design of which the offence is part (*R v Tattersal* (1801), 1 *Russell on Crimes* 6th ed, 162; see *Young v. R* (1789), 3 *Term Rep* 98, *R v Standley* (1816), *Russ & Ry* 306, C C R., *R v Sheppard* (1839), 9 C & P 121, *R v Harrington* (1851), 5 *Cox*, C C 231, *Fitzherbert's Grand Abridgment*, tit *Corona*, fol 249, pl 86).

(*j*) 1 *Hale*, P C 616. The distinction between principals and accessories before the fact is now of little practical importance, as an accessory before the fact may be indicted as a principal (see p. 247, *post*).

(*k*) See *R v Standley*, *supra*; *R v Sheppard*, *supra*; *R v Hornby* (1844), 1 *Car & Kir* 305.

misdeameanours accessories before the fact are reckoned principals in the second degree (l).

SECT. 2.  
Degrees of  
Criminal  
Liability.

Presence not  
essential.

527. In some cases a person is deemed a principal in the first degree although he was not present when the act was done which makes the offence complete. Thus, if one with a criminal intent contrives an injury to another and by means of the contrivance the person whom it is designed to injure receives the injury in the absence of the contriver, the latter is a principal in the first degree, although he was absent when the injury was actually inflicted (m). So a person who employs an innocent agent to commit a felony is a principal in the first degree, although he is not present when the agent does the act which consummates the felony (n).

If several persons act together in one common unlawful undertaking and a crime is committed by one of them, but it is not known by whom, all are principals in the first degree (o).

A person who with guilty intent is engaged in the execution of any part of a criminal transaction is a principal in the first degree, it is not necessary that he should be present during the entire transaction or when it is completed (p).

(l) *Du Cros v Lambourne*, [1907] 1 K B 40, *R v De Marny*, [1907] 1 K B 388, C C R, *R v Burton* (1875), 13 Cox, C C 71, C C R, *R v Greenwood* (1852), 2 Den 433, *R v Waudby*, [1895] 2 Q B 482, C C R, *Benford v Sims*, [1898] 2 Q B 64.

(m) *E.g.*, if A, with intent to kill B, lays poison in B's way, and B or anyone else in A's absence takes it and dies in consequence, A is a principal in the murder (Fost 349, Kel 52). In such a case, if the poison is not taken by anyone, A is guilty of an attempt to murder (see p 258, post).

(n) Fost 349, Kel 52, *R v Michael* (1840), 2 Mood C C 120, *R v Butcher* (1858), Bell, C C 6, *R v Williams* (1842), Car & M 259, *R v Giles* (1827), 1 Mood C C 166, *R v Bull* (1840), 1 Cox, C C 281, *R v Clifford* (1845), 2 Car & Kir 202, *R v Manley* (1844), 1 Cox, C C 104, *R v Blandale* (1848), 2 Car & Kir 765, per ELL, J, at p 768, *R v Bannen* (1844), 2 Mood C C 309, *R v Valler* (1844), 1 Cox, C C 84, *R v Palmer* (1804), 1 Bos & P (N. R.) 96. In such cases the act of the innocent agent is deemed to be as much the act of the person who procures it as if the procurer were himself present (*R v Clifford*, *supra*). If a person being abroad or on the high seas procures an agent to commit a crime in England, the procurer is deemed to have committed the crime in England (*R v Driscoll* (1803), 1 East, 161, *R v Garrett* (1853), Dears C C 232).

(o) In the case of *R v Salmon* (1880), 6 Q B D 79, C C R, three men went into a field near to a road and some houses for the purpose of practising rifle shooting. They all fired shots with a rifle, and no precautions were taken to prevent danger, one of the shots killed a boy in a garden near the field. It was held that all the three were guilty of manslaughter, although it was not known who fired the shot which killed the boy, all having united to fire at the spot in question, and all having omitted to take precautions to prevent danger. In the case of *R v Borthwick* (1779), 1 Doug (K B) 207, the jury found that a person was killed by a blow from one of the prisoners, but from which of them the jury did not know, the prisoners were members of a press-gang acting illegally in pressing seamen without a warrant, but there was no finding that the prisoners were all present or that they were all met together on one common illegal design, it was held that the prisoners could not be made responsible for the death of the person killed.

(p) *R v Sheppard* (1839), 9 C. & P. 121; *R v Kelly* (1847), 2 Car & Kir. 379, and see *R v Dyer* (1801), 2 East, P C. 767. If several persons combine to forge an instrument, each person who executes any part of the forgery is a principal, although he may not know by whom the other parts are executed, and may not be present when the whole forgery is completed (*R v Bingley*



**SECT. 2.**  
**Degrees of**  
**Criminal**  
**Liability.**

**Principals in**  
**the second**  
**degree.**

**528** All who are present aiding and abetting, when a felony is committed, but who take no part in the actual perpetration of the felony, are principals in the second degree (*q*).

To constitute a principal in the second degree mere presence at the crime is not enough, there must be a common purpose, an intent to aid or encourage the persons who commit the crime and an actual aiding or encouraging (*r*)

A person who is present aiding and abetting may be a principal in the second degree, although he is, or is deemed to be, physically incapable of being a principal in the first degree (*s*).

A person cannot be a principal in the second degree unless a felony has been committed by a principal in the first degree (*t*),

(1821), *Russ & Ry* 446, *R v Kirkwood* (1831), 1 Mood C C 304, *R v Dade* (1831) 1 Mood C C 307) If several persons take part in the actual commission of a crime, the degree of their guilt may vary according to their intent, e.g., if A, intending to murder B, attacks him, and C enters into the affray unlawfully but suddenly, and without malice aforethought, and B is killed by A and C, this is murder by A and manslaughter by C (1 Plowd 101, and see *Mohun's Case* (Lord) (1692), 12 State Tr 949, 1022)

(*q*) *Coalheavers' Case* (1768), 1 Leach, 64, *R v Towle* (1816), *Russ & Ry* 314 This applies to statutory felonies as well as to felonies at common law (*ibid*) An indictment against a principal in the second degree may charge him with committing a felony in the same way as a principal in the first degree is charged, or may charge him with "being feloniously present, aiding, abetting and assisting" the felon to commit the felony (*R v Gogerly* (1818), *Russ & Ry* 343)

(*r*) *M'Kinn's Case* (1858), Bell, C C 20 Thus, if a duel takes place and one of the combatants is killed, the surviving combatant is guilty of murder as a principal in the first degree, the seconds are principals in the second degree Other persons present, if they sustain the combatants either by advice or assistance or go to the ground for the purpose of encouraging and forwarding the conflict, are principals in the second degree (*R v Young* (1838), 5 C & P 644) The combatants at a prize fight with fists are guilty of assault as principals in the first degree, and all other persons who are present and take part in the management of the fight or aid and abet the combatants are principals in the second degree Mere voluntary presence at a prize fight does not necessarily make a person a principal in the second degree, if he does not encourage or assist the fight, but *semble* the mere presence of a person unexplained at a prize fight affords some evidence of an aiding and abetting in the fight (*R v Coney* (1882), 8 Q. B D 534, C C R.) If two persons agree to commit suicide together and one accomplishes his object in the presence of and with the consent of the other, the survivor is guilty as a principal in the second degree of the murder of the one who dies (*R v Dyson* (1823), *Russ & Ry* 523, *R v Alton* (1838), 8 C & P 418) If the owner or person in control of a vehicle is in it, while it is being driven at an excessive speed, although he does not himself drive it, yet as he could and ought to have prevented it being so driven at an excessive speed, he is liable as a principal in the second degree for the offence of unlawfully driving (*Du Cros v Lambourne*, [1907] 1 K B 40)

(*s*) *Eg* a boy under the age of fourteen years (see p 240, *ante*) or a woman may be a principal in the second degree in the crime of rape (*R v Eldershaw* (1828), 3 C & P 396, *R v Ram* (1893), 17 Cox, C C 609) But a girl who is of such an age that unlawful sexual intercourse with her is a crime cannot be convicted of aiding and abetting a person to have such intercourse with her (*R v Tyrrell*, [1894] 1 Q. B 710, C C R.) A woman who consents to the use upon herself of an instrument with intent to procure her miscarriage may be convicted of "being present, aiding and abetting" the person who uses the instrument (*R v Sockell* (1908), 72 J P. 428)

(*t*) See *M'Daniel's Case* (1755), 19 State Tr 745, 801—807, and *R v Johnson* (1841), Car & M. 218



and unless such person is present when it is committed, and has a common criminal purpose with the principal in the first degree (a)

**SECT. 2.  
Degrees of  
Criminal  
Liability.**

A person who has a common criminal purpose with the principal in the first degree is a principal in the second degree, if he is either actually present at the scene of the felony or present so near at hand as to enable him to afford aid to the person who commits the crime (b)

Presence at  
or near the  
scene of the  
felony.

A person who though privy to the commission of a felony is not, when it is committed, sufficiently near to the scene to afford aid is not a principal in the second degree, but is an accessory before the fact (c)

A person who comes up after a felony has been completed and assists the felon is not a principal, but may be an accessory after the fact (d).

**529** Although a man is present while a felony is being committed, yet if he takes no part in it, and does not act in concert with those who commit it, he is not a principal in the second degree, merely because he does not endeavour to prevent the felony or to apprehend the felon (e)

Participation

A person who is present at the commission of a crime knowing

(a) *M'Evyn's Case* (1858), Bell, C O 20

(b) *R v Soares* (1802), Russ & Ry 25, *R v Gogerly* (1818), Russ & Ry. 343 Thus, if A goes into a house and steals goods there, and B, while A is inside, remains outside for the purpose of assisting A, B is a principal in the second degree (*R v Owen* (1825), 1 Mood C O 96, *R v Gogerly*, *supra*) So, if O and D accompany E to the door of a shop, knowing that E intends there to utter a forged document, and E utters the document in the shop, and O and D remain outside in a vehicle for the purpose of taking E away with the proceeds of the uttering, O and D are principals in the second degree, although they could not be seen by the person to whom the document was uttered (*R v Vanderstein* (1865), 10 Cox, C O 177, C O R)

(c) *R v Davis and Hall* (1806), Russ & Ry 113, *It v Kelly* (1820), Russ. & Ry 421, *R v Jeffries and Bryant* (1848), 3 Cox, C O 85 In misdemeanours such a person would be a principal in the second degree (*R v Clayton* (1843), 1 Car & Kir 128, *R v Moland* (1843), 2 Mood C O 276) But as to the distinction between principals and accessories before the fact, see p 248, *ante*

(d) *Eg*, F steals goods from the owner's premises and removes them to a place outside, G is then told of the theft and assists in carrying the goods away to another place, G is not a principal in the second degree to the theft, but is an accessory after the fact, the asportation being complete before G did anything, he is also guilty of receiving the goods knowing them to be stolen (*R v M'Makin and Smith* (1808), Russ & Ry 333, n, *R v King* (1817), Russ. & Ry 332) But if F with felonious intent removes the goods to another part of the owner's premises, although there may have been sufficient asportation of the goods to make F guilty of larceny (see p 630, *post*), yet the asportation is not complete for all purposes, and if G assists in carrying the goods away, while they are still on the owner's premises, he is liable as a principal, the transaction not being complete till the goods are removed from the owner's premises (*R v Dyer* (1801), 2 East, P O 767) H. and J wound K, H then makes off, and after he has got away L comes up and assaults K; L cannot be found guilty on an indictment charging him jointly with H. and J with wounding K. (*R v M'Phane* (1841), Car & M. 212).

(e) *R v Coney* (1852), 8 Q B D 534, C. C. R., *per CAVE, J*, at p 539; 1 Hale, P O 439, *Fest* 350 Such a person might be guilty of misprision of felony, but there is no recent instance of a prosecution for such an offence (see p. 603, *post*).

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**Collateral**  
**acts.**

that it is being committed is not liable as a principal, if he is not present for the purpose of aiding or encouraging (f)

530. If several persons are present together prepared to pursue a common unlawful object at all hazards, and one of them in furtherance of the common object does a criminal act, then all are responsible for the act, whether it was originally contemplated or not. The person who does the act is a principal in the first degree, the others are principals in the second degree (g). If the act is not done in furtherance of the common unlawful object, no one is liable for it except the person who does the act (h).

(f) Thus, where A agreed with B to get C to commit a robbery so that B should arrest C, and that A and B should divide between them a reward for the apprehension of C, and A was present when the robbery was committed, it was held that A was not guilty of the robbery as a principal in the second degree, because although he acted from a bad motive, yet he was not present to aid, but to detect, and did not intend that the felony should be successful (*Dannelly's Case* (1816), Russ & Ry 310). In such a case A and B are not guilty of the felony, but are guilty of a conspiracy (*M'Daniel's Case* (1755), 19 State Tr 745, 808).

(g) Thus, where A and B go out with the common object of robbing C, and A, in pursuit of the common object does an act which causes the death of C in such circumstances that it is murder in A, it is also murder in B (*R v Jackson* (1857), 7 Cox, C C 357). So if two or more persons go out together for the purpose of committing a breach of the peace and in the course of the accomplishment of the common design one of them kills a man, the others are also guilty of manslaughter (*R v Harrington* (1851), 5 Cox, C C 231, see *Cornwallis's (Lord) Case* (1678), 7 State Tr 143, 157). Where a number of persons went out all armed with guns for the purpose of poaching, and on being surprised by gamekeepers threatened to shoot the gamekeepers who tried to arrest them, and one only of the poachers fired and wounded a gamekeeper, it was held that all might be found guilty of wounding with intent to murder (*R v Edmeads* (1828), 3 C & P 390). If two persons each drive a vehicle at a furious rate along a public road, and incite each other so to drive, and one of the vehicles runs over a man and kills him, each of the two persons is guilty of manslaughter (*R v Swindall* (1846), 2 Car & Kir 230).

(h) Thus, where some of a party of men, who were engaged unlawfully in breaking into a house for the purpose of apprehending suspected persons, stole goods in the house, it was held that those who took no part in the stealing were not liable for that crime, for, although they were engaged in an unlawful act, they knew not of any intent to steal (*Anon* (1664), 1 Leach, 7, n). If a gang of poachers attack a gamekeeper and leave him senseless on the ground and go away, and one of them returns and robs him, the others are not guilty of the robbery, as, though there was a common intent to kill game and resist the keeper, there was no common intent to steal (*R v Hawkins* (1828), 3 C & P 392, see *Anon* (1723), 8 Mod Rep 164). A number of persons were engaged by the tenant of a house to assist him in carrying away his household goods to avoid distress for rent, and assembled armed with bludgeons and other weapons, the landlord of the house, accompanied by another party, came to prevent the removal of the goods, and a violent affray ensued. While they were fighting one of the company killed a boy who was standing looking on but totally unconcerned in the fray. It was held that, as the boy was unconcerned in the fray, his having been killed by one of the company could not affect the rest, who, though present, could not be said to be aiding and abetting the death of one who was totally unconcerned in the design for which the parties had assembled (*R v Hodgson* (1730), 1 Leach, 6, see *R v Plummer* (1702), 12 Mod. Rep 627). So where several persons were trespassing in a wood in pursuit of game and only one of them had a gun, and he was walking in front of the others and fired the gun and killed a gamekeeper who came upon the trespassers, it was held that these facts afforded no evidence on which the rest of the party could be found

581. Persons who procure, counsel, or command another to commit a felony, but are not present when it is committed, are accessories before the fact (1).

It is not necessary that there should be any direct communication between an accessory before the fact and the principal felon, it is enough if the accessory direct an intermediate agent to procure another to commit the felony without naming or knowing of the person to be procured (2).

A person is not an accessory before the fact, unless there is some sort of active proceeding on his part, he must incite or procure or encourage the criminal act, or assist or enable it to be done, or engage or counsel or command the principal to do it (3).

Part 2.  
Degrees of  
Criminal  
Liability.

Accessories  
before the  
fact.

guilty of murder (*R v Skeet* (1866), 4 F & F 931, see *R v. Edmeads* (1828), 3 C & P 390) If A and B together commit a felony and upon an alarm run different ways, and A, to avoid being taken, attacks and maims C who is pursuing him, B is not liable for the injury to C (*R v White* (1806), Russ. & Ry 99)

(1) *R v Soares* (1802), Russ & Ry 25, *R v Gordon* (1789), 1 Leach, 515 If a person is indicted as an accessory before the fact, the indictment alleges that the accused did "feloniously counsel, procure, and command" or "incite, move, aid, or hire" the felon to commit the felony, but such a person may now be indicted as a principal for committing the felony (see p 257, *post*) The felony may be either a felony at common law or one created by statute, although the statute uses no words expressly applicable to accessories A number of statutes contain provisions expressly applicable to accessories, and use various expressions to describe them, e.g., the stat (1831) 23 Hen 8, c 1, speaks of "abatement, procurement, helping, maintaining or counselling", the stat (1847) 1 Edw 6, c 12, s 13, of "aiders abettors, procurers and counsellors", the stat. (1857) 4 & 5 Phil & Mar. of those who "command, hire or counsel", the stats (1858) 31 Eliz c 12, s 5, and (1823) 21 Jac 1, c 6, of "accessories", the stat (1897) 39 Eliz c 9, s 2, of "procurers or accessories", the stat (1891) 3 & 4 Will & Mar c 9, s 1, of those who "comfort, aid, abet, assist, counsel, hire or command", the stat (1702) 1 Ann stat 2, c 9, of "counsellors and contrivers"; the Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s 2, of those who "counsel, procure or command" See also 1 Russell on Crimes, 6th ed., p 171.

(2) *R v Cooper* (1833), 5 C & P 535 Thus, A bids B to hire somebody to murder C, and furnishes money for that purpose, D, a person whom A never saw or heard of, is hired by B and commits the murder A is an accessory before the fact to the act of D (*M'Daniel's Case* (1755), 19 State Tr, per FOSTER, J, at p 804, see also *Somerset's (Earl) Case* (1616), 2 State Tr 966)

(3) *R v Taylor* (1875), L R 2 C C R 147 In this case A and B quarrelled and agreed to fight with their fists, and to put down £1 each, so that £2 might be paid to the winner, C consented to hold the £2 and pay it over to the winner A and B fought, and A received injuries of which he afterwards died. C, who had nothing to do with the fight and was not present at it, being informed who was the winner, but knowing nothing of A's danger, paid the £2 to B; there was no reason to suppose beforehand that the life of either A or B would be endangered It was held that C was not an accessory to the manslaughter of A.

If A commits suicide with the assistance of B, who supplies the means by which the act is done, but is absent when the act is done, B is an accessory before the fact to the murder of A (*R v Russell* (1832), 1 Mood C 346); so if A supplies B with a noxious drug with intent to procure a miscarriage and B takes the drug in A's absence and dies from its effect, A is an accessory before the fact to the murder of B (*R v Russell, supra*). A person who in these circumstances supplies a drug with such an intent "causes the drug to be taken," although he is absent when it is taken (*Wilson's Case* (1856), Dears & B 127) But if B is induced by A to get her a noxious drug for the purpose of procuring a miscarriage, and gets the

## SECT. 3.

Degrees of  
Criminal  
Liability.Continuing  
procurement

As regards offences which are sudden and unpremeditated there can be no accessories before the fact (*m*)

532 If a person procures another to commit a felony, the procurement continues, until it is countermanded or the felony is perpetrated (*n*). If the person who procures the felony countermands his consent before the act is done, and the felony is nevertheless committed by the principal with knowledge of the countermand, the procurer is not liable as an accessory, but if the countermand is not communicated until after the act is done, the procurer is liable (*o*)

For what acts  
accessory is  
liable.

If a person procures another to commit a felony of one kind, and the principal knowingly and wilfully commits a felony of another kind, the procurer is not liable as an accessory (*p*)

If the principal complies in substance with the instigation of the accessory, but makes some variation in circumstances of time or place or in the manner of execution, the accessory is liable (*q*)

drug with the full knowledge of the purpose to which it was to be applied, but does not either mediate or immediately administer the drug or cause or intend or wish it to be taken, and A takes the drug in B's absence and dies in consequence, B is not guilty of murder either as a principal or as an accessory (*R v Fretwell* (1862), Le & Ca 161) In the case of *R v De Morny*, [1907] 1 K B 388, it was held that the editor of a newspaper who inserted in his paper advertisements, not obscene themselves, by which he knowingly assisted in the sale of obscene books and photographs, was guilty of causing and procuring obscene publications to be sold and published

(*m*) 1 Hale, P C 615, *Libby's Case* (1597), 4 Co Rep 43 b Where manslaughter ensues upon a sudden debate or affray, and there is no antecedent design to do an unlawful act, it seems that there cannot be an accessory before the fact to the manslaughter (*ibid*), and see *R v Taylor* (1875), L R 2 C C R 147, per MILLER, J at p 148) But if A aids and abets B to do an unlawful act, and B does it and in the furtherance of the unlawful design causes the death of C in such circumstances that it is manslaughter in B, it seems that A in such a case would be an accessory before the fact to the manslaughter (see *Taylor's Case* (1857), Dears & B 288, where the prisoner was convicted of manslaughter, although he was absent when the act was done which caused the death).

(*n*) *R v Parker* (1560), 2 Dyer, 186 a B counselled A, who was with child, to murder the child when it should be born, the child was born and was murdered by A and C It was held that B was liable as an accessory before the fact, although the procurement was before the birth, yet it continued afterwards (*ibid*), and see *R v Banks* (1873), 12 Cox, C C 393)

(*o*) 1 Hale, P C 618, 2 Plowd 476

(*p*) Fost 369 Thus, if A commands B to burn C's house, and B, in so doing commits a robbery, A, though accessory to the burning, is not accessory to the robbery, for "that is a thing of a distinct and unsequential nature" (1 Hale, P C 617, 4 Bl Com 37) So if A counsels B to steal the goods of C on the road, and B breaks into C's house and steals them there, A is accessory to the stealing, but not accessory to the breaking into the house, because it is a felony of another kind (2 Plowd 475, 1 Hale, P C 617) A, wishing to get rid of his wife B, consulted C, who advised him to poison her and supplied poison for that purpose, A, in the absence of C, gave the poison to B, who did not take it but gave it to D, who took it and died, it was held that C was not an accessory to the murder of D. (*Saunders' Case* (1576), 2 Plowd 473)

(*q*) Thus if A advises B to murder C by poison and B kills C by any other means, or if A commands or advises B to murder C at one place and C commits the murder at another place, A will be liable as an accessory, for the murder of C was the object principally in contemplation (Fost 369, 370, 2 Hawk P. C., c. 29, s. 20, Bacon, *Maxims*, *Regula* 16). If A counsels B to steal goods in C's house, but not to break into it, and B does break into the

**NOTE 2.**  
**Degree of**  
**Criminal**  
**Liability.**

Where the principal goes beyond the terms of the instigation, yet if the advice or order of the instigator is substantially followed or obeyed, and the felony committed was a probable consequence of what was ordered or advised, the person giving the order or advice is an accessory to that felony (r)

**533.** A person who, knowing a felony to have been committed by another, receives, relieves, comforts, or aids the felon in any way, either to assist in the disposing of the proceeds of the crime or to hinder his being apprehended or tried or suffering punishment, is an accessory after the fact (s)

Accessories  
after the  
fact.

house, *semble* A is accessory to the breaking (Bacon Maxims, *Regula* 16) but see note (p), p 254, *ante*

(r) *Fost* 370, see *Purkes v Prescott* (1869), L R 4 Exch 169, *per* BYLES, J, at p 182. Thus if A advise B to rob C, and in committing the robbery B kills C, in such circumstances that the killing of C is in the ordinary course of things the probable consequence of the robbery, A is accessory to the murder of C, or if A advises B to burn C's house and B burns the house and the flames take hold of D's house and burn it, A is accessory to the burning of D's house (*Fost* 370, see 1 Russell on Crimes, 8th ed, 175, and *Purkes v Prescott*, *supra*, *per* BYLES, J, at p 182). Where A told B a scandalous story of C with the intent that B should publish it in a newspaper, and B published the story and added comments of his own, it was held that A was liable as an accessory for the publication of the whole libel (*R v Cooper* (1846), 8 Q. B. 133).

(s) 1 Hale, P C 618, 4 Bl Com 37. This applies to statutory felonies as well as to felonies at common law, although the statute creating the felony says nothing of accessories (1 Hale, P C 613, but see 1 Hale, P C 614, 2 Hawk P C, c 29, s 14). A person is an accessory after the fact who advises or assists a felon in his escape, or harbours and conceals in his house a felon under pursuit (2 Hawk P C, c 29, s 26, 1 Hale, P C 618, 619, 4 Bl Com 38, *R v Lee* (1834), 6 C & P 538). At common law the mere receipt of stolen goods by a person who knew that they were stolen did not of itself make such a person an accessory after the fact to the larceny, but if a person knowing that goods were stolen received them from a thief to keep for him, or to facilitate his escape or to furnish him with supplies, then such person was an accessory after the fact (1 Hale, P C 619). But now the receipt of stolen goods by a person who knows that they were stolen is a substantive felony in certain cases (see p 676, *post*), but there are still some cases in which a person who receives stolen property can only be prosecuted for a common law misdemeanour as an accessory after the fact (*R v Payne*, [1906] 1 K B 97, C C R, and p 680, *post*). Whoever rescues a felon from an arrest or supplies him with the means of breaking prison and escaping, or, *semble*, opposes the apprehension of a felon, is an accessory after the fact (1 Hale, P C 619, 621, 2 Hawk P C, c 29, s 27), but one who merely suffers the felon to escape is not an accessory (1 Hale, P C 619), nor one who relieves or maintains a felon who is bailed or gives medical aid to a felon or assists him in his trial (1 Hale, P C 332, 620). A man may be an accessory after the fact by receiving one who was accessory before as well as by receiving the principal (2 Hawk P C, c 29, s 1), and a man may be accessory after the fact to a larceny of his own goods or to a robbery on himself by harbouring or concealing the thief or assisting in his escape (*Fost* 123). To substantiate a charge of receiving a felon, it must be proved that the party charged did some act to assist the felon personally. Being found in possession of a sum of money derived from the disposal of property stolen by the felon is not enough, if there is nothing to show that the party charged received any of the stolen property or did anything to assist the felon personally (*R v Chapple* (1840), 9 C & P 353). Where A stole a banknote, and B, knowing of the theft, made an unsuccessful attempt to change the note, and A went to a shop to purchase some goods in payment for which he tendered the note, B waiting outside, it was held that this was evidence of B's comforting and assisting A, as B helped A to get rid of the note and thus evade justice (*R v Butterfield* (1843), 1 Cox, C. C 39). But the

**SECT. 2.**  
**Degrees of**  
**Criminal**  
**Liability.**

A person who assists a felon is not an accessory after the fact, unless such person had notice, either express or implied, of the felony having been committed (a).

Unless the felony is complete at the time when the assistance is given, the person who gives the assistance is not an accessory after the fact to the completed felony (b).

A wife cannot be an accessory after the fact to a felony committed by her husband, as she is not bound to discover the crime of her husband (c). But a husband may be an accessory to his wife's felony by assisting her (d).

**Treason.**

**534** A person who receives or assists a traitor with knowledge that he is a traitor is a principal and not an accessory (e)

**Indictment**  
**etc of**  
**principals in**  
**second**  
**degree.**

**535** A principal in the second degree or an accessory before the fact is generally liable to the same punishment as a principal in the first degree (f)

A principal in the second degree may be convicted, although the

assistance which makes a person an accessory after the fact must tend to prevent the principal felon from being brought to justice (*R v Lee* (1834), 6 O & P 536). If A commits the offence of sending a letter to B demanding money with menaces, and C after the letter has been sent assists A in the attempt to obtain money from B, *semble* C is not an accessory to the felony of sending the letter, the felony was complete when the letter was sent, and C, by assisting in the attempt to obtain money, does not aid A in concealing, or even in carrying out the felony which had been completed (*R v Hansill* (1849), 3 Cox, C C 597). If a person employs an intermediate agent to receive and assist a felon, the receipt is the act of the employer and makes him an accessory after the fact, even if he does not see the felon (*R v Jarvis* (1837), 2 Mood & R 40).

(a) 2 Hawk P C, c 29, s 32

(b) Thus, if A wounds B mortally, and after the wound given, but before B's death, C, with knowledge of the wounding, assists A, C is not an accessory after the fact to the homicide (2 Hawk P C, c 29, s 35, 4 Bl Com 38), but *semble* he might be an accessory to the felony of maliciously wounding with intent to murder or to do grievous bodily harm (1 Russell on Crimes, 6th ed, 179).

(c) 2 Hawk P C, c 29, s 34, 1 Hale, P C 47, 621

(d) 1 Hale, P C 621

(e) Post 346, *R v Tracy* (1703), 6 Mod Rep 30. But such a person is of the nature of an accessory, and the indictment against him alleges the receipt of the traitor as the overt act, and formerly the receiver could not be found guilty until the principal traitor had been convicted (Post 346). The conviction of Lady Alice Lisle for receiving a traitor was reversed by Act of Parliament on the ground that at the time of her conviction the principal traitor had not been convicted (see *Lisle's (Lady Alice) Case* (1685), 11 State Tr 298, at p 381), and *quære* whether anyone could even now be found guilty of treason for assisting or receiving a traitor, unless the principal traitor has been convicted, for the Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s 3 (see p 257, *post*), only applies to an accessory to a felony, and, although the word "felony" sometimes includes treason (see 4 Bl Com 91), it does not seem to do so in this Act, for there are no accessories in treason.

(f) *R v Gogerly* (1818) Russ & Ry 343, C C R.; and see Unlawful Oaths Act, 1797 (37 Geo 3, c 123), s 3; Unlawful Oaths Act, 1812 (52 Geo 3, c 104), s 4, Piracy Act, 1837 (7 Will 4 & 1 Vict, c 88), s 4, Treason Felony Act, 1848 (11 & 12 Vict, c 12), s 8, Larceny Act, 1861 (24 & 25 Vict, c 96), s 98; Malicious Damage Act, 1861 (24 & 25 Vict, c 97), s 56; Forgery Act, 1861

principal in the first degree is not joined in the indictment or has not been convicted (*g*).

Neither a principal in the second degree nor an accessory can be convicted of felony, unless it is proved that a principal felony has been committed (*h*).

SECT. 2.  
Degrees of  
Criminal  
Liability.

**536.** An accessory before the fact to a felony may be indicted, tried, convicted and punished in all respects as if he were a principal felon (*i*).

Indictment  
etc. of  
accessory  
before the  
fact.

Every accessory before the fact to a felony is guilty of a felony. He may be indicted and convicted as an accessory before the fact to the principal felony, together with the principal felon or after the conviction of the principal felon, or he may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted or is or is not amenable to justice (*j*).

The punishment of an accessory before the fact is the same,

(24 & 25 Vict c 98), s 49, Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 35, Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 67

(*g*) *R v Wallis* (1703), 1 Salk 334, *R v Taylor* (1785), 1 Leach, 360, *R v Towle* (1816), Russ & Ry 314

(*h*) *M'Daniel's Case* (1755), 19 State Tr 745, 801, *R v Johnson* (1841), Car & M 218, *R v Turner* (1832), 1 Mood C C 347, C C R, *R v Gregory* (1867), L R 1 C O R 77 A person who incites another to commit a felony, when no felony is committed, is guilty of a misdemeanour (see *infra*)

(*i*) Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s 1, see also s. 5 This Act applies to accessories before the fact to any felony, whether it be a felony at common law or by virtue of any Act "passed or to be passed" S 1 of the Act of 1861 is a re-enactment of s 1 of the Criminal Procedure Act, 1848 (11 & 12 Vict c 46), and applies to murder as well as to other felonies (*R v Chadwick* (1850), Greaves' Criminal Laws Consolidation Acts, 2nd ed, p 20) An accessory before the fact may now be indicted for and convicted of the principal felony (*R v Hughes* (1860), Bell, C C 212, *R v Chadwick, supra*, *R v James* (1890), 24 Q. B D 439, C O R), although the principal has been acquitted (*R v Hughes, supra*)

(*j*) Accessories and Abettors Act, 1861 (24 & 25 Vict c. 94), s 2 This section applies both to a felony at common law and to any statutory felony (*ibid*), but only where a person procures or incites another to commit a felony and a felony is actually committed. If a person incites another to commit a felony and no felony is committed, the offence is a misdemeanour and not a felony (*R v Gregory* (1867), L R 1 C O R. 77) The section makes being an accessory before the fact to a felony a substantive felony The effect of the section is that an accessory before the fact may be indicted as such either along with the principal felon or after the principal felon has been convicted, or he may be indicted alone, although the person charged as the principal felon has not been convicted or is not amenable to justice (see *R v Wallace* (1811), 2 Mood. C O 200, decided upon the corresponding provision of the Criminal Law Act, 1828 (7 Geo. 4, c 84), s. 9), *R v Ashmall* (1840), 9 C. & P 236, is inconsistent with *R v Wallace, supra*, and, it seems, is not law But if a person is indicted as an accessory before the fact and it turns out that he was in fact a principal, he should, it seems, be acquitted (*R v Brown* (1878), 14 Cox, C O 144, and see *R v Gordon* (1789), 1 Leach, 515 The better course in all cases of accessories before the fact to a felony is, it seems, to indict them as principals (see *R v James* (1890), 24 Q. B D 439, C O R). If A is indicted as the principal felon and B as an accessory before the fact, and A is found guilty of a misdemeanour and B of aiding and abetting him, this amounts to a verdict that B and C are principals, as there are no accessories in misdemeanours (*R v Hapgood* (1870), L R 1 C O R 221, *R v Waudby*, [1895] 2 Q. B. 482, C. O. R.). See further, as to the trial of accessories, Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), ss. 6, 7, 9.



**SECT. 3**  
**Degrees of**  
**Criminal**  
**Liability**

Indictment  
 etc of  
 accessory  
 after the  
 fact

whether he is convicted of a substantive felony or is convicted as an accessory (*k*)

**537.** An accessory after the fact to a felony is guilty of felony (*l*), he may be indicted and convicted either as an accessory after the fact to the principal felony together with the principal felon, or after the conviction of the principal felon, or he may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice (*m*)

An accessory after the fact to murder is liable to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labour (*n*)

An accessory after the fact to any other felony, except where there is some other punishment specially provided, is liable to be imprisoned for any term not exceeding two years with or without hard labour (*o*)

Accomplices  
 in mis-  
 demeanour

**538** Any person who aids, abets, counsels, or procures the commission of any misdemeanour is to be tried, indicted, and punished as a principal offender (*p*)

**SUB-SECT 3 — Attempt to commit a Crime**

Attempt to  
 commit a  
 crime.

**539** Every attempt to commit a felony or a misdemeanour, whether such felony or misdemeanour is created by statute or is an offence at common law, is itself a crime (*q*).

(*k*) See note (*j*), p 257, *ante*

(*l*) Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s. 3

(*m*) *Ibid* This section applies both to any felony at common law and to any statutory felony (*ibid*). The substantive felony of which an accessory after the fact can be convicted is that of being an accessory after the fact. A person who is indicted as a principal to a felony cannot be found guilty of being an accessory after the fact to the felony, the indictment must charge him with being an accessory after the fact (*R v Fallon* (1862), Le & Ca 217). If a person is indicted as a principal for murder and others are indicted as accessories after the fact, and the principal is found guilty of manslaughter, the accessories may also be found guilty and convicted of manslaughter (*R v Richards* (1877), 2 Q B D 311, O O R.).

(*n*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 67

(*o*) Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s. 4. Imprisonment with or without hard labour for a period not exceeding two years is also the punishment fixed for accessories after the fact in offences under the Piracy Act, 1837 (7 Will 4 & 1 Vict c. 88), s. 4, Treason Felony Act, 1848 (11 & 12 Vict c 12), s. 8, Larceny Act, 1861 (24 & 25 Vict c 96), s. 98, Malicious Damage Act, 1861 (24 & 25 Vict c 97), s. 56, Forgery Act, 1861 (24 & 25 Vict c 98), s. 49, Coinage Offences Act, 1861 (24 & 25 Vict c 99), s. 35, Offences against the Person Act, 1861 (24 & 25 Vict c. 100), s. 67 (except in cases of murder, see *supra*)

(*p*) Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s. 8, and see Summary Jurisdiction Act, 1848 (11 & 12 Vict c 43), s. 5. This is only a declaration of the common law (*Benford v Sims*, [1898] 2 Q. B. 641, *Du Cros v Lambourne*, [1907] 1 K B 40, *R v De Marny*, [1907] 1 K. B. 388, C O R.). *Semble*, s. 8 of the Accessories and Abettors Act, 1861 (24 & 25 Vict. c 94), only applies where the misdemeanour which is counselled etc is actually committed (*R v Gregory* (1867), L R. 1 O. C R. 77)

(*q*) *R v Scofield* (1784), Cald Mag Cas. at p. 402; *R v Rodrick* (1837), 7 O. & P. 795, *R v Martin* (1840), 9 O & P. 215, *R v Chapman* (1849), 1 Den.



Any overt act immediately connected with the commission of an offence, and forming part of a series of acts which if not interrupted or frustrated would, if the offence could be committed, end in the commission of the actual offence, is, if done with a guilty intent, an attempt to commit the offence (*r*), whether the offence which is attempted is one that could or could not have been committed (*s*).

Merely to make preparations for the commission of an offence is not to attempt to commit the offence. An act, in order to be a criminal attempt, must be immediately, and not remotely, connected with and directly tending to the commission of an offence (*t*).

432 The attempt is a misdemeanour at common law, unless it has been made a statutory felony or a statutory misdemeanour. The following are statutory felonies. To administer poison etc with intent to commit murder. Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 14, 15 (see p 593, *post*), to shoot at any person or attempt to discharge loaded arms with intent to maim etc, *ibid*, s 8 (see p 600, *post*), to attempt to choke etc with intent to commit an indictable offence (see p 602, *post*), to attempt to set fire to a building etc in such circumstances that it would be felony if the building etc were set fire to, Malicious Damage Act, 1861 (24 & 25 Vict c 97), ss 8, 18, 26, 27, 44 (see p 773, *post*). The following are statutory misdemeanours. To attempt to conceal the birth of a child, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 60 (see p 598, *post*), to attempt to commit an unnatural offence, *ibid*, s 62 (see p 539, *post*), to attempt to have unlawful carnal knowledge of a girl under sixteen, Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69) ss 4, 5 (1) (see p 615, *post*), to attempt to injure post office letter-boxes, Post Office Act, 1908 (8 Edw 7, c 48), s 61. An attempt to commit suicide is a misdemeanour at common law, it is not an attempt to commit murder within the Offences against the Person Act 1861 (24 & 25 Vict c 100), s 15 (*R v Doudy* (1854), 6 Cox, C. C. 463). On any indictment charging a person with committing an offence the jury may find the defendant guilty of an attempt to commit that offence (Criminal Procedure Act, 1861 (14 & 15 Vict c 100), s 9, and see *McPherson's Case* (1857), Dears. & B 197). As to the punishment of a common law misdemeanour, see p. 410, *post*.

(*r*) *R v Eagleton* (1855), Dears C. O. 515, *R v Taylor* (1859), 1 F & F 511, *R v Cheeseman* (1862), Le & Ca. 140, *R. v. Lu ncker*, [1906] 2 K B 99, O. O. R.

(*s*) Thus, if a person tries to pick someone's pocket he is guilty of an attempt to steal, though there is nothing in the pocket (*R v Ring* (1892), 61 L J (M. C.) 116, O. O. R., overruling *R v Collins* (1864), Le & Ca 471, see *R v Brown* (1889), 24 Q. B. D. 357, O. O. R., *R v Williams*, [1893] 1 Q. B. 320, O. O. R.) If a woman, believing that she is with child and that she is taking a noxious thing, does, with intent to procure abortion, take a thing which is in fact harmless, she is guilty of an attempt to procure abortion (*R v Brown* (1899), 63 J. P. 790).

(*t*) Thus, it is not an attempt to commit an offence to procure the means to commit the offence, when such procuring is a neutral act and may be of an innocent nature, e.g. to buy matches for the sake of setting fire to a house is not an attempt to burn the house, but to light a match for the purpose of setting fire to a house might be a criminal attempt (*R v Taylor* (1859) 1 F & F 511). For a person to have in his possession the means of committing a crime, even though he has the intent to commit it, is not of itself an offence at common law, thus, it is not an offence at common law to have possession of obscene prints with intent to sell them, or of counterfeit coin with intent to utter it, or of coining instruments for the purpose of coining (*R v Heath* (1810), Russ. & Ry 184, *R v Stewart* (1814), Russ. & Ry 263 (disapproving of *R v Sutton* (1736), Lee temp Hard. 370), *Dugdale v R* (1853), Dears C. O. 64). To have possession of counterfeit coin or of coining instruments is in certain cases a statutory offence (see p 516, *post*). As to keeping obscene publications for purpose of sale, see now Obscene Publications Act, 1957 (20 & 21

## SECT. 2.

Degrees of  
Criminal  
LiabilityIncitement  
to crime

## Conspiracy.

**540.** It is a crime for one person to incite or solicit or provoke another to commit a crime, although no crime is actually committed; such an incitement or soliciting or provoking is a form of attempting to commit a crime (a).

## SUB-SECT 4—Conspiracy.

**541** If two or more persons agree together to do something contrary to law, or wrongful and harmful towards another person, or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons who so agree commit the crime of conspiracy (b) So long as the design to do such

Vict c 83), s 1 But it is an offence at common law to obtain and procure obscene prints with intent to sell them, or base coin with intent to utter it, or coming instruments with intent to make counterfeit coin (*Dugdale v R* (1853), Dears O O 61, *Fuller's Case* (1816), Russ & Ry 308, *R v Roberts* (1855), Dears O O 539), and, *semble*, to have possession of such things may be evidence of procuring them (*Fuller's Case, supra*) To deliver poison to an agent with directions to him to cause it to be administered in such circumstances that, if it were administered, the agent would have been the sole principal felon, is an attempt to cause poison to be administered, which, if done with a guilty intent, is made criminal by the Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 14 As to attempts to discharge loaded firearms, see *R v St. George* (1840), 9 C & P 483, *R v Lewis* (1840), 9 C & P 523, *R v Brown* (1888), 10 Q B D 381, O O R., *R v Duckworth*, [1892] 2 Q B 83, O O R., *R v Lannaker*, [1906] 2 K B 99, O O R., and p 600, *post*

(a) *R v Higgins* (1801), 2 East, 5, *R v Quail* (1866), 4 F & F 1076, *R v Ransford* (1874), 13 Cox, O O 9, O O R., *R v De Kromme* (1892), 17 Cox, O O 492, C O R., and see *Hicks' Case* (1818), Hob 215, *R v Johnson* (1878), 2 Show 1, *R v Scofield* (1784), Cald Mag Cas 397, 400, *R v Darby* (1702), 7 Mod Rep 101, *R v Vaughan* (1769), 4 Burr 2494 If a felony is actually committed, the person who incites is guilty of a felony as an accessory (see p 253, *ante*). If a misdemeanour is committed, the person who incites is guilty of the misdemeanour as a principal To incite to commit a felony, when no felony is committed, is generally a common law misdemeanour (*R v Gregory* (1867), L R 1 O O R 77) Incitement to mutiny is a statutory felony (Incitement to Mutiny Act, 1797 (37 Geo 3, c 70), s. 1, see p 464, *post*) The following are statutory misdemeanours To incite to murder (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 4, see p 595, *post*), to incite to commit a crime punishable under the Post Office Act, 1908 (8 Edw 7, c 48) (see s 69), to incite to commit an offence under the Official Secrets Act, 1889 (52 & 53 Vict c 52) (see s 3). To constitute the offence of inciting or soliciting there must be a communication which reaches some person whom the offender wishes to incite or solicit (*R v Krauss* (1902), 66 J P 121). It is not necessary that the mind of the person whom it is sought to reach should be in any way influenced (*ibid*), but if a communication is sent with a view to solicit or incite, and does not reach the person for whom it is intended, the person sending it is guilty of the misdemeanour of attempting to solicit or incite (*R v Ransford* (1874), 13 Cox, O O 9, *R v Banks* (1873), 12 Cox, O O 393, *R v Krauss, supra*) The offence of inciting or soliciting to commit a crime may be committed by publishing the incitement or solicitation in a newspaper addressed to the public in general (*R v Most* (1881), 7 Q B D 244, O O R.; *R v Brown* (1895), 63 J P 790) If the person who incites believes that a crime can be accomplished by certain means, he commits the crime of inciting, although the commission of the crime in the manner proposed is impossible (*R v Brown, supra*). A girl who is of such an age that unlawful carnal knowledge of her is a crime (see p. 615, *post*) does not commit any criminal offence in inciting a male person to have unlawful carnal knowledge of her (*R v Tyrrell*, [1894] 1 Q. B 710, C. O R.)

(b) *Quinn v Leathem*, [1901] A. C. 495, per Lord BRAMPTON, at p. 525;

an act rests in intention only it is not criminal, but as soon as two or more agree to carry it into effect, then their act becomes punishable (c).

The gist of the offence lies in the bare engagement and association to do an unlawful thing (i.e., a thing contrary to or forbidden by law), whether such thing be criminal or not (d), and whether any act other than the engagement or association be done by the conspirators or not (e).

An act which would not be criminal if done by one person may

*O'Connell v R* (1844), 11 Cl & Fin 155, H L, per TINDAL, C J, at p 233, *R v Aspinall* (1876), 2 Q B D 48, C A, per BRETT, J, at p 58, *Mulcahy v R* (1868), L R 3 H L 306, per WILLES, J, at p 317, *R v Purnell* (1881), 14 Cox, C C 508 (see stat. 33 Edw. 1 (*Ordinacio de Conspiratoribus*)). An agreement which is immoral or against public policy or in restraint of trade, or otherwise of such a character that the courts will not enforce it, is not necessarily a conspiracy. An agreement, to be a conspiracy, must be to do that which is contrary to or forbidden by law, as to violate a legal right or make use of unlawful methods, such as fraud or violence, or to do what is criminal (see *Mogul Steamship Co v McGregor, Gow & Co*, [1892] A. C. 25, per Lord HALSBURY, at p 39, and see per Lord BRAMWELL, at p 46, *R v Aspinall*, *supra*, per BRETT, J, at p 59, compare *R v Seward* (1834), 1 Ad & El 706). It was said by Lord ELLENBOROUGH, C J, in pronouncing the judgment of the Court of King's Bench in *R v Turner* (1811), 13 East, 228, at p 231, that a conspiracy to commit a mere civil trespass, e.g., to go and sport upon another person's ground, is not an indictable offence. The decision in *R v Turner* was disapproved of in *R v Rowlands* (1851), 17 Q. B. 671, per Lord CAMPBELL, C J, at p 686, on the ground that the facts in *R v Turner* amounted to a conspiracy to commit an indictable offence, but in *R v Rowlands*, *supra*, no opinion was expressed on the dictum of Lord ELLENBOROUGH. If a conspiracy causes damage to the person against whom it is directed, such person has a civil remedy by action (see *Savile v Roberts* (1698), 1 Ld Raym. 374, and *Mogul Steamship Co v McGregor, Gow & Co*, *supra*, at p. 46). After the passing of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86) (see s. 3), the law was different in regard to actions and prosecutions with respect to trade combinations, and an action for conspiracy might be brought where an indictment could not be brought (*Quinn v Leathem*, [1901] 1 Q 495), but this is no longer so (see Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 1).

(c) *Mulcahy v R*, *supra*. The overt act in such a case consists of the agreement of the conspirators, which is an act in advancement of the intention which each of them has conceived in his mind (*Mulcahy v R*, *supra*, at p 328). A conspiracy to commit treason is therefore an overt act sufficient to support an indictment for treason (*Mulcahy v R*, *supra*).

(d) *Savile v Roberts* (1698), 1 Ld Raym. 374, *R v Spragg* (1760), 2 Burr 993, *Leith v Pope* (1780), 2 Wm Bl 1327, at p 1329, *Mogul Steamship Co v McGregor, Gow & Co* (1889), 23 Q. B. D. 598, C A, per BOWEN, L J, at p 616, "Certain kinds of conduct not criminal in one individual may become criminal if done by combination among several", see also *R v Warburton* (1870), L R 1 C O B 274, per COCKBURN, C J, at p 276, *R v Orman* (1880), 14 Cox, C C 381, *Mogul Steamship Co v McGregor, Gow & Co*, [1892] A. C. 25, per Lord HALSBURY, L C, at p 38, and per Lord BRAMWELL, at p 45. But in all such cases there must exist either an ultimate object of malice, or wrong, or wrongful means of execution involving elements of injury to the public or negating the pursuit of a lawful object (*Mogul Steamship Co v McGregor, Gow & Co*, *supra*, per Lord FIELD, at p 52). No agreement or combination by two or more persons to do or procure to be done any act in contemplation and furtherance of a trade dispute between employers and workmen is indictable as a conspiracy, if such act committed by one person would not be punishable as a crime (Conspiracy and Protection of Property Act, 1875 (39 & 40 Vict. c. 86), s. 3, and see Trade Disputes Act, 1906 (6 Edw. 7, c. 47), ss. 1, 5, and title TRADE AND TRADE UNIONS). See p. 563, *post*.

(e) *O'Connell v R* (1844), 11 Cl & Fin. 155, H. L.

**SECT. 2.**  
**Degrees of**  
**Criminal**  
**Liability.**

Different  
 kinds of  
 conspiracy —  
 To commit a  
 crime.

To obstruct  
 etc. the course  
 of justice.

be criminal if done by two or more in combination. But there is no conspiracy unless either the object of the combination is unlawful in the sense of being contrary to or forbidden by law, or illegal methods are resorted to in carrying it out (*f*).

A conspiracy to commit a crime is criminal, whether the crime is or is not committed (*g*), and whether the crime is punishable on indictment or on summary conviction (*h*)

A person may be guilty of conspiracy with others to commit a crime, although he himself could not be found guilty of the crime which he has conspired to commit (*i*)

**542** A conspiracy to prevent, obstruct, pervert, or defeat the course of public justice is criminal (*k*). So is a conspiracy to raise discontent and disaffection among the subjects of the King, or to stir up jealousies, hatred, and ill-will between different classes of the King's subjects, or to promote amongst the King's subjects in one part of the United Kingdom feelings of ill-will and hostility

(*f*) *Mogul Steamship Co v McGregor, Gow & Co*, [1892] A C 25, per Lord WATSON, at p 41

(*g*) See *R v O'Donnell* (1848), 7 State Tr (N s) 638, *R v Drury* (1883), 15 Cox, C C 334 (conspiracy to commit treason), *R v O'Connell* (1844), 5 State Tr (N s) 2 (conspiracy to make seditious speeches and issue seditious publications), *R v Holberry* (1840), 4 State Tr (N s) 1317 (conspiracy to create a breach of the peace), *R v Cooper* (1843), 4 State Tr (N s) 1249 (conspiracy to cause riots), *R v Forbes* (1823), 2 State Tr (N s) 939 (conspiracy to assemble riotously), *R v Sergeant* (1826), Ry & M 352 (conspiracy to procure the swearing of a false oath), *R v O'Connell* (1831), 2 State Tr (N s) 629 (conspiracy to hold a meeting prohibited by a proclamation made under an Act of Parliament), *R v Wakefield* (1827), 2 Lew C C 1 (conspiracy to abduct a female), *R v Grey (Lord)* (1682), 9 State Tr 127, *R v Duguid* (1906), 75 L J (K B) 470, C C R (conspiracy to remove a girl under age from the custody of a person who has lawful charge of her), and see *Wade v Broughton* (1814), 3 Ves & B 172, *R v Whitchurch* (1890), 24 Q B D 420, C C R (conspiracy to administer drugs to a woman with intent to procure abortion). A conspiracy to commit treason may be charged as a substantive offence, or may be laid as an overt act (*R v O'Donnell* (1848), 7 State Tr (N s) 638, *Mulcahy v R* (1868), L R 3 H L 308, *R v Davitt* (1870), 11 Cox, C C 676). Some conspiracies have been made express statutory offences, e.g., a conspiracy to commit murder is a statutory misdemeanour (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 4, see p. 595, *post*), a conspiracy to cause an explosion of a nature likely to endanger life is a statutory felony (Explosive Substances Act, 1883 (46 Vict. c 3), s. 3). As to a conspiracy to pervert and obstruct the due course of justice, see p. 500, *post*.

(*h*) *R v Pollman* (1809), 2 Camp 229, *R v Whitchurch* (1890), 24 Q B D 420, C C R.

(*i*) Thus, a woman who, believing herself to be but not actually being with child, conspires with others to administer drugs to herself or to use instruments on herself with intent to procure abortion, may be convicted of a conspiracy to procure abortion, although the woman by herself could not be guilty of procuring abortion, as she was not with child and did not come within the Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 58 (*R v Whitchurch* (1890), 24 Q B D 420, C C R.). So, although the mother of a child may not be prosecuted under the Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s. 56, for taking her child out of the possession of a person having the lawful charge of the child, yet she may be indicted for conspiracy with someone else to take the child out of the possession of such person (*R v Duguid* (1906), 75 L J (K B) 470, C C R., *R v Crossman, Ex parte Chetwynd* (1908), 98 L T 760, see also *R v Wakefield* (1827), 2 Lew C C 1, *R v Kohn* (1864), 4 F & F 68).

(*k*) See p. 500, *post*

towards the King's subjects in another part of the United Kingdom ; or to diminish the confidence of the King's subjects of any part of his dominions in the general administration of the law in that part, or to bring into hatred and disrespect the tribunals established in any part of the King's dominions for the administration of justice (l) .

SECT. 2.  
Degrees of  
Criminal  
Liability.

543. The gist of the offence of criminal conspiracy may consist in the agreement to do an act contrary to public morals or decency, although such act may not of itself be criminal if done by only one person (m)

To do an  
act contrary  
to public  
morals etc.

A conspiracy to cheat and defraud is criminal, even though the act which it is agreed to do is not criminal if done by one person (n)

To cheat.

A combination to injure a person without just cause or excuse is a criminal conspiracy (o)

To injure.

(l) *O'Connell v R* (1844), 11 OI & Fin 155, H L, per TINDAL, C J, at p 234 See *R. v Vincent* (1839), 9 O & P 91 In *Vertue v Olive* (Lord) (1769), 4 Burr 2472, it was held that a conspiracy among the officers in the army of the East India Company to resign their commissions together was criminal It is criminal for two or more persons to combine to obtain money as a reward for procuring from the Government the appointment of a person to a post in the public service (*R v Pollman* (1809), 2 Camp 229) But an indictment will not lie against members of either House of Parliament for a conspiracy to make false statements in the House of which they are members, such statements are on the same footing as speeches delivered in Parliament by members, which cannot be the foundation of any legal proceedings out of Parliament (*Ex parte Watson* (1869), L R 4 Q. B 573)

(m) *Et q.*, to conspire to prevent the burial of a body (*R v Young* (1784), 1 Wentworth's Pleadings, 219, cited in *R v Lynn* (1788), 2 Term Rep 734), to bring about a marriage by the use of violence, threats, contrivance or some sinister means (*R v Seward* (1834), 1 Ad & El 706), to procure a woman to become a prostitute (*R v Howell* (1864), 4 F & F 160), to procure a woman to have illicit connection with a man (*R v Delaval* (1763), 3 Burr 1434, *R v Grey* (Lord) (1682), 9 State Tr 127, *R v Mears* (1821), 2 Den 79) As to the last two kinds of conspiracy, see now Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69) ss 2, 3

(n) *R v Warburton* (1870), L R 1 O O R 274, at p 276, *R v Aspinall* (1876), 2 Q. B D 48, C A, at p 69 As to conspiracy to defraud, see p 708, post

(o) *R v Parnell* (1881), 14 Cox, O C 508, at p 513 See *Quinn v Leatham*, [1901] A C 495, at p 510, *Sweeney v Coote*, [1907] A. C, per Lord LORENBURN, L O, at p 222 A combination by persons engaged in trade to protect and extend their trade and increase their profits is not a conspiracy, if no unlawful means are employed, although it may result in injury to other persons (*Mogul Steamship Co v McGregor, Gow & Co*, [1892] A C 25) But a combination by two or more persons without justification or excuse to injure a man in his trade by inducing his customers or servants to break their contracts with him or not to deal with him or continue in his employment, or a combination of two or more persons without justification to injure a workman by inducing employers not to employ him or not to continue to employ him, is a conspiracy and is punishable (*Quinn v Leatham*, [1901] A C 495, *Giblan v National Amalgamated Labourers' Union of Great Britain and Ireland*, [1903] 2 K B 600, C A, *Read v Friendly Society of Operative Stonemasons*, [1902] 2 K B 732, C A, *South Wales Miners' Federation v Glamorgan Coal Co*, [1905] A. C 239) As to the meaning of just "cause and excuse," and as to the difference between a legitimate combination which injures another and a criminal combination to injure another, see *Mogul Steamship Co v McGregor, Gow & Co* (1889), 23 Q. B D 598, C A, per BOWEN, L J, at p. 616 As to trade combinations many of the cases before the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), are no longer authorities (*Gibson v Lawson*, [1891] 2 Q. B 545, per Lord COLERIDGE, C J, at p. 560, and see, too, Trade Disputes Act, 1906 (6 Edw 7, c. 47), ss 1, 2, 3) A malicious

**SECT. 2.**  
**Degrees of**  
**Criminal**  
**Liability**

Husband  
and wife  
Trial of  
conspirators.

**544** Husband and wife cannot alone commit the crime of conspiracy, as they are deemed but one person in law, but they may commit the crime of conspiring with others (*p*).

**545.** As the crime of conspiracy involves the agreement of two persons, if two persons are tried together for conspiring with one another, and there is no charge of conspiring with anyone else, they must be both acquitted or both convicted (*q*).

**SUB-SECT. 5 — Misprision.**

Misprision of  
treason or  
felony.

**546** If a person knows of a treason or felony that is being planned or committed, or has been committed, and without consenting to it conceals his knowledge and converts it into a source of emolument to himself, he is guilty of misprision of treason or of felony, as the case may be (*r*)

combination against a trader to ruin him in his trade is indictable (*R v Sterlmg* (1604), 1 Lev 125, *R v Cope* (1719), 1 Stra 144, *R v Eccles* (1783), 1 Leach, 274, but see *Mogul Steamship Co. v. McGregor, Gow & Co* (1889), 23 Q. B. D 598, O A., per FRX, L.J., at p 632, and as to conspiracies affecting trade, see p 662, *post*) A combination to hiss an actor or to damn a play is indictable (*Anon* (1766), 1 Russell on Crimes, 6th ed., 496, *Clifford v Brandon* (1810), 2 Camp 358, per MANSFIELD, C.J., at pp 369 and 372, *Gregory v. Brunswick (Duke)* (1844), 6 Man & G 205, 217, 953, 961, 6 Wentworth's Pleadings 443) It is criminal to conspire to charge a man falsely with being the father of a bastard child (*R v Best* (1706) 2 Ld Raym 1167, *R v Kimberly* (1662), 1 Lev 62, S O *sub nom R v Timberley* (1663), 1 Keb 254, *R v Armstrong* (1677), 1 Vent 304), or to injure a man by bringing any false charge against him, whether such charge is of a criminal offence or not (*R v Rupal* (1762), 3 Burr 1320, *R v Spragg* (1760), 2 Burr 993), but it is lawful to form associations to prosecute felons and even to put laws in force against political offenders (*R v Murray* (1823), Matthews, Digest of Criminal Law, per ABBOTT, C.J., at p 90) It is criminal to conspire to prefer an indictment for the purpose of extorting money, whether the charge be true or false (*A-G v Blood* (1680), T Raym 417, *R v Kinnerseley* (1719), 1 Stra 193, *R v Hollingberry* (1825), 4 B & C 329, *R v Jacobs* (1845), 1 Cox, C C 173) The falsity of the charge is only material as showing the *bona* or *mala fides* of the prosecution (*Pippet v Hearn* (1822), 5 B. & Ald 634) It is criminal to conspire, with intent to injure a minor and defraud him of his property, to bring about a marriage between him and a common prostitute by means of a false oath and false pretences (*R v Sergeant* (1826), Ry & M 352) It is a criminal conspiracy for a man and woman to marry in the name of another person for the purpose of raising a specious title to the estate of the person whose name is assumed (*R v Robinson* (1746), 1 Leach, 37) *Semble*, a combination to insult and annoy a person is indictable (see *Mogul Steamship Co v McGregor, Gow & Co*, [1892] A C 25, per Lord HALSBURY, L O., at p 38) According to a dictum of Lord ELLENBOROUGH, an indictment will not lie for a conspiracy to deprive a man of an office in a trading company which is illegal because not incorporated as the law requires (see *R v Stratton* (1809) 1 Camp 649, n)

(*p*) See 1 Hawk. P C, c 72, s 8, *R v Whitehouse* (1852), 6 Cox, C C 38 But husband and wife may be tried for a conspiracy entered into by them before marriage (*R v Robinson, supra*)

(*q*) *R v Manning* (1883), 12 Q. B. D 241, *R v. Plummer*, [1902] 2 K. B 339; and see *R v Thompson* (1851), 16 Q. B. 832 One person may singly be convicted of conspiring with another person who has not been tried (*R v Kinnerseley* (1719), 1 Stra 193, *R v Nichols* (1742), 13 East 412, n, *R v Cooke* (1826), 5 B. & C 588, *R v Kenrick* (1843), 5 Q. B. 49, *R v Ahearne* (1852), 2 I O L. R. 381, C C. R., *R. v. Duguid* (1906), 75 L J (K. B.) 470, C O. R.) The other conspirator may be tried afterwards, but if he is acquitted, the first conviction cannot stand (*R v Cooke supra*, *R v Plummer, supra*)

(*r*) As to misprision of treason, see title CONSTITUTIONAL LAW, Vol. VI,

## Part II.—Original Criminal Jurisdiction(c).

### SECT. 1.—*Courts of Ordinary Criminal Jurisdiction.*

SECT. 1.  
Courts of  
Ordinary  
Criminal  
Jurisdiction.  
—  
Criminal  
courts.

**547.** The courts which exercise original criminal jurisdiction, and which administer the ordinary criminal law in England, are the following —(1) The High Court of Parliament, (2) the King's Bench Division of the High Court of Justice, (3) the Courts of Assize and of Oyer and Terminer and General Gaol Delivery; (4) the Central Criminal Court, (5) the Courts of Quarter Sessions of the Peace, (6) the Courts of Justices of the Peace sitting in petty sessions. The first four are superior courts, the remaining two are inferior courts. All except the last are courts of record.

#### SUB-SECT 1 —*High Court of Parliament.*

**548.** The High Court of Parliament(t) is the supreme court in the kingdom, and has power to try "great and enormous offenders," whether lords or commoners, by the process of impeachment. Parliament,

In impeachment the House of Commons, acting as the most solemn grand inquest of the kingdom, presents the offender for trial by the House of Lords, who sit as judges under the presidency of the Lord High Steward, if a peer is impeached, or of the Lord Chancellor or Speaker of the House of Lords, if a commoner is impeached (u). Impeachment.

The trial is conducted by managers appointed by the House of Commons, who draw up articles of impeachment, the trial is governed by the general principles of the criminal law, but matters of procedure are determined by the law of Parliament (v). Procedure.

p 353, and *R v Thistlewood* (1820), 33 State Tr 681, *per* ABBOTT, C J, at p 690, *Trials of the Regicides* (1680), 5 State Tr 947, at p 985, *R v Tonge* (1682), 6 State Tr 226, n, *R v Walcot* (1683), 9 State Tr 519, at p 553, and stat. 1 & 2 Ph. & M. c 10). As to misprision of felony, see Proceedings under a Special Commission for the County of York (1813), 31 State Tr, the charge of THOMPSON, B, at p. 969, *Williams v Bayley* (1866), L. R. 1 H. L. 200, *per* Lord WESTBURY, at p 220, where it is said that the words "misprision of felony" have now "somewhat passed into desuetude." There is no modern instance of any prosecution either for misprision of treason or for misprision of felony, see p 603, *post*, as to infants, see note (g), p 240, *ante*.

(c) For Court of Criminal Appeal, see p 432, *post*, and title COURTS, p 91, *ante*.

(t) See title COURTS, p 20, *ante*.

(u) Anson, Law and Custom of the Constitution, 4th ed., I, 364. See also title COURTS, p 19, *ante*.

(v) See 4 Bl. Com 256. Report made on the 30th April, 1794, from the Committee of the House of Commons appointed to inspect the Lords' Journals relative to their proceedings on the trial of Warren Hastings (Works of Edmund Burke, ed. 1826 (Rivington), Vol. XIV, 289, 294, 304, 355). Acts of attainder and of pains and penalties, although involving sentence and punishment, are legislative in form, the parties concerned, however, are admitted to defend themselves by counsel and witnesses before both Houses (Erskine May, Parliamentary Practice, 11th ed, 670). Such Acts are new laws, and not an execution of those already in being (4 Bl. Com 256).



SECT 1  
Courts of  
Ordinary  
Criminal  
Jurisdiction.

King's Bench  
Division of  
High Court  
of Justice.

The House of Lords has also original jurisdiction to try peers indicted for treason or felony (*w*).

SUB-SECT 2—*High Court of Justice—King's Bench Division*

**549** The King's Bench Division of the High Court of Justice (*a*) on its Crown side has cognisance of all criminal causes from treason down to the most trivial misdemeanour or breach of the peace (*b*). It is a permanent court of oyer and terminer, and is the principal court of criminal jurisdiction (*c*). In addition to an original jurisdiction to try indictments found by the grand jury of the counties of London and Middlesex (*d*) it has jurisdiction to try indictments removed into it by writ of *certiorari*, to try informations for certain misdemeanours, filed *ex officio* by the Attorney-General or by the Master of the Crown Office on the suggestion of a private individual (*e*).

The King's Bench Division of the High Court of Justice is the only court before which a corporation can be tried on indictment, as only in that court can a corporation plead by attorney, and this is the only way in which a corporation can plead at all (*f*).

SUB-SECT 3—*Courts of Assize, Oyer and Terminer, and Gaol Delivery*

Assize  
courts.

**550** The courts of assize and of oyer and terminer and general gaol delivery are courts which are held at regular intervals under royal commissions in every county or assize district of England, except Middlesex, the City of London, and other counties and parts of counties within the district of the Central Criminal Court (*g*). Separate commissions are made out for each county and for each county of a city and assize district on each circuit.

The commission of oyer and terminer gives the persons named in

(*w*) See p 270, *post*

(*a*) See title COURTS, p 55, *ante*

(*b*) 4 Bl Com 262, Judicature Act, 1873 (36 & 37 Vict c 66), s. 34

(*c*) It has a special and peculiar jurisdiction over treasons committed abroad (see *R v Lynch* (1903), Official Report), and over criminal and fraudulent acts committed by persons in public employment abroad in the exercise of their employment, and over the offence of wilfully neglecting or delaying to deliver or transmit writs for the election of members of Parliament (Parliamentary Writs Act, 1813 (53 Geo 3, c 89), s 6) See also *R v Eyre* (1868), L. R. 3 Q. B. 487

(*d*) See *R v Castro* (1874), L. R. 9 Q. B. 350. It is not necessary to summon a grand jury, unless the Master of the Crown Office has before the fourth day of the sittings received notice of some business intended to be brought before them (Middlesex Grand Juries Act, 1872 (35 & 36 Vict. c 52), and see Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (3), R. S. C., Jan 15, 1903)

(*e*) See p 329, *post*

(*f*) See *R v Birmingham and Gloucester Rail Co* (1840), 9 O & P 469. If an indictment is found elsewhere against a corporation, the proper course is to remove the indictment by *certiorari* (*ibid*). See also title CORPORATIONS, Vol VIII., p 392

(*g*) For a list of the circuits, see title BARRISTERS, Vol II., p 36. Assizes are held at certain towns on the Northern and North-Eastern circuits four times a year, on the other circuits three times a year. As to the dates for holding them, see Order in Council of 19th March, 1906, W. N.



## PART II.—ORIGINAL CRIMINAL JURISDICTION.

the commission authority to hear and determine all treasons, felonies and misdemeanours committed within the county, city, or district named in the commission, the commission of gaol delivery empowers the commissioners to try and deliver every prisoner who is in the gaol awaiting trial, or has been committed to the gaol, when they arrive at the circuit town (*h*).

SECT. 1.  
Courts of  
Ordinary  
Criminal  
Jurisdiction.

The commission of assize relates partly to civil and partly to criminal matters, and enables the persons therein named to exercise any civil and criminal jurisdiction capable of being exercised by the High Court of Justice (*i*).

The King may grant special commissions of oyer and terminer and gaol delivery to particular places, or for the trial of particular persons.

**551.** For London and the adjacent district a special court of oyer and terminer and gaol delivery is provided in the Central Criminal Court (*k*).

Central  
Criminal  
Court.

### SUB-SECT. 4.—Courts of Quarter Sessions.

**552** The courts of quarter sessions of the peace are inferior courts of record. In counties they are composed of justices, who sit together under the commission of the peace issued for the county to try certain indictable offences (*l*). In boroughs which have a separate court of quarter sessions, and which come under the Municipal Corporations Act, 1882 (*m*), the court is held by the recorder, and he is the sole judge (*n*).

Quarter  
sessions.

4th April, 1908, p. 91. See also Order in Council of 28th June, 1909 (*London Gazette*, July 2, 1909), and p. 72, *ante*.

(*h*) 4 Bl Com 267. But see now the Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 1. A court of oyer and terminer or general gaol delivery is not now required to deliver from gaol a person who has been committed for trial at quarter sessions, unless the High Court of Justice so directs, or unless the person is not tried at the next court of quarter sessions after his committal (*ibid.*, s. 1, 3). Under the commissions of oyer and terminer and gaol delivery the commissioners can proceed not only upon indictments found at the same assizes, but also upon indictments found at previous assizes and upon indictments found at quarter sessions which have been removed to the assizes, either because they are not triable at quarter sessions, or because the court of quarter sessions has made a special order for their removal. See p. 268 (note), *post*.

(*i*) See also Judicature Act, 1873 (36 & 37 Vict. c. 60), s. 16 (11), s. 29, making assize courts a branch of the High Court. A commissioner of assize appointed in pursuance of s. 29 of the Act, when engaged in the exercise of any jurisdiction assigned to him in pursuance of the Act, is to be deemed to be a court of the High Court of Justice (see *R v Dudley* (1884), 14 Q. B. D. 271, 560, *R v Parke*, [1903] 2 K. B. 432, *per WILLS, J.*, at p. 436). See also title COURTS, p. 72, *ante*.

(*k*) As to the Central Criminal Court, see title COURTS, p. 87, *ante*.

(*l*) For Courts of Quarter Sessions, see title COURTS, p. 82, *ante*, MAGISTRATES. For the present form of the commission of the peace in counties, see Statutory Rules and Orders Revised, Vol. II, Clerk of the Crown in Chancery, p. 10. See *Keen v. R* (1847), 10 Q. B. 928. In quarter sessions in counties two justices at the least must be present to form a court.

(*m*) 45 & 46 Vict. c. 50, s. 182.

(*n*) *Ibid.*, s. 165. The City of London does not come under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) (see s. 6 of that Act and

## SECT. 1.

Courts of  
Ordinary  
Criminal  
JurisdictionPetty  
sessions.SUB-SECT 5—*Justices of the Peace.*

**553.** The courts of justices of the peace sitting in petty sessions are inferior courts composed of justices sitting either as a court of summary jurisdiction or to hold a preliminary inquiry when a person is charged with an indictable offence. When so sitting justices act without the intervention of a jury (a).

the Municipal Corporations Act, 1835 (5 & 6 Will 4, c 76), s 1 and Schedules A and B). It has a court of quarter sessions of the peace, the judges of which are the Lord Mayor, Recorder, and aldermen (see Charter of Charles I of 1638, Charter of George II, 1741, Historical Charters etc of the City of London, pp 170 and 290), but their power to try indictments in felonies and misdemeanours of a serious nature was taken away by s 17 of the Central Criminal Court Act, 1834 (4 & 5 Will 4, c 36). Indictments may still be preferred and found at these sessions (see s 19). The court chiefly sits now to hear appeals (see Pulling, Laws and Customs of the City of London, p 217, and see Local Government Act, 1888 (51 & 52 Vict c 41), s 40 (3), s 41, s 42 (13), s 100, definition of "quarter sessions").

The courts of quarter sessions have authority over all common law offences against the peace which are not expressly withdrawn from them (see Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1), and, it seems over all offences against any statute made concerning the peace (*R v Alsop* (1691), 4 Mod Rep 49 *per* HOLR, O J, at p 51). It seems a matter of some doubt to what extent they have jurisdiction over offences newly created by statute which do not affect the peace, and which do not expressly or by implication give them or deprive them of jurisdiction (see 4 Bl Com 268, *R v Buggs* (1694) 4 Mod Rep 379, *R v Smith* (1705), 2 Id Raym 1141, *R v Furrington* (1711), 1 Salk 406, Com Dig Justices of Peace, B, 3, *R v Cock* (1815), 4 M & S 71). If an indictment is found at quarter sessions for a crime which the court has no jurisdiction to try, the proper course is to transmit it to the assizes for trial there (see Assizes Relief Act, 1849 (52 & 53 Vict c 12), s 5, Central Criminal Court Act, 1834 (4 & 5 Will 4, c 36), s 19), an indictment that is so transmitted must be tried at the assizes (*R v Wetherell* (1819), Russ & Ry 381), and no order can be made, or is needed, to require the clerk of the peace of the county, where the indictment is found, to return it to the clerk of assize (*R v Wildman* (1872), 12 Cox, O O 354).

It was held before the Judicature Act, 1873 (36 & 37 Vict c 66), that the authority of quarter sessions, whether for a county or a borough, is not in law determined or suspended by the coming of the judges into the county under their commissions of assize, oyer and terminer, and general gaol delivery, but that it would be inconsistent and improper that courts of quarter sessions should be held concurrently with the assizes for the same county (*Smith v R.* (1849), 13 Q. B 738), see 9 O & P. 790). But *quære* whether the effect of s 29 of that Act is not to alter the law, so that the authority of quarter sessions would be now determined or suspended (*Smith v R.*, *supra*, at p 741), but as to quarter sessions in the district of the Central Criminal Court, see the Central Criminal Court Act, 1834 (4 & 5 Will 4, c 36), s 21.

(a) See also titles COURTS, p 74, *ante*, MAGISTRATES. The powers of justices are defined by the Indictable Offences Act, 1848 (11 & 12 Vict c 42), and the Summary Jurisdiction Acts (11 & 12 Vict c 43, 20 & 21 Vict c 43, 25 & 27 Vict c 77, 42 & 43 Vict c 49, 47 & 48 Vict c 43, 62 & 63 Vict c 22), see title MAGISTRATES. Even indictable offences can in some cases be summarily dealt with by justices. If a child (i.e. a person who in the opinion of the court before whom he is brought is under the age of fourteen) is charged before a court of summary jurisdiction with an indictable offence other than homicide, the court may deal with it summarily, if it thinks it expedient and if the parent or guardian of the child when informed by the court of the right to have the child tried by a jury does not object (Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), ss 10, 49, Children Act, 1908 (8 Edw. 7, c. 67), s. 128). There are similar powers to deal summarily with a "young person" (i.e. a person who in the opinion of the court before whom he is

SECT. 2.—*Courts of Special Criminal Jurisdiction.*SUB-SECT. 1 —*Coroners' Courts*

SECT. 2.  
Courts of  
Special  
Criminal  
Jurisdiction  
—  
Coroner's  
court.

554. The coroner's court is a common law court of record, the function of which in criminal matters is to inquire into the cause of the death of any person whose dead body is lying within the coroner's jurisdiction, if there is reasonable cause to suspect that such person has died a violent or an unnatural death or a sudden death the cause of which is unknown, or has died in prison,

brought is of the age of fourteen and under the age of sixteen) charged with an indictable offence other than homicide, if the young person consents to be summarily dealt with (*ibid.*, ss 11, 49, Summary Jurisdiction Act, 1899 (62 & 63 Vict c 22), s 2, Children Act, 1908 (8 Edw 7, c 67), s 128) An adult (i.e. a person who in the opinion of the court is sixteen years old or more) who is charged with certain indictable offences may be dealt with summarily, if he pleads guilty, if he does not plead guilty but consents to be dealt with summarily, he may be dealt with summarily, if the value of the property taken or obtained or the damage done does not exceed 40s. The indictable offences in question are simple larceny or an offence punishable as simple larceny, larceny from the person, larceny by a clerk or servant, embezzlement, receiving stolen goods, aiding abetting etc the commission of simple larceny etc, attempting to commit simple larceny etc, obtaining or attempting to obtain a chattel etc by false pretences, unlawfully and maliciously setting fire to a wood (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss 12, 13, and Schedule, and Summary Jurisdiction Act, 1899 (62 & 63 Vict c 22), Schedule) A court of summary jurisdiction, with the consent of an adult, may deal summarily with an indecent assault upon a person who in the opinion of the court is under the age of sixteen years (Children Act, 1908 (8 Edw 7, c. 67), s 128 and Sched II. A court of summary jurisdiction, with the consent of the accused, may deal summarily with a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for a libel published in the newspaper, if the court is of opinion that, though the person charged is shown to have been guilty, the libel was of a trivial character and that the offence may be adequately punished by a fine not exceeding £50 (Newspaper Libel and Registration Act, 1881 (44 & 45 Vict c 60), s 5) Offences mentioned in the First Schedule of the Inebriates Act, 1898 (61 & 62 Vict c 60), may also, with the consent of the accused, be dealt with summarily (s 2(2)). An adult who is charged before a court of summary jurisdiction with an indictable offence with which the court could deal summarily, if the adult pleaded guilty or consented, but who has been previously convicted, and is in consequence liable to punishment by penal servitude for the offence with which he is charged, cannot be summarily dealt with (Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 14) As regards all indictable offences with which justices cannot deal summarily, they hear the witnesses, take their depositions in writing, and, if they decide to commit for trial bind the prosecutor and witnesses to attend at the court before which the prisoner is to be tried. In cases which may be tried either at quarter sessions or at assizes, the justices have thus the power of designating the court which is to try the accused (Assizes Relief Act, 1889 (52 & 53 Vict c 12), s 1, and see p 326, *post*) As regards offences not properly indictable with which the justices may deal summarily, a defendant may in cases where he is liable to imprisonment for a term exceeding three months claim to be tried by a jury, if a defendant so claim, he must be indicted (Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 17) There are other cases of offences punishable on summary conviction in which a defendant may elect to be tried on indictment (see, e.g., Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), s 9, Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s 2 (6) In such a case a defendant must be told that he has a right to be tried by a jury, and if he is not told and is convicted, the conviction is bad (*R v Cockshott* (1898), 67 L. J (Q. B.) 467; *R v Beesby*, [1909] 1 K B 849) *R v Fowler* (1896) 64 L. J (M. C.) 9, was disapproved of in *R v Beesby*, *supra*

SECT. 2  
Courts of  
Special  
Criminal  
Jurisdiction.

or in such place and in such circumstances as to require an inquest in pursuance of any Act of Parliament (p).

SUB-SECT. 2—*Special Tribunals*

Court of  
the King in  
Parliament

555 There are certain tribunals which only have jurisdiction over particular classes of persons. A man can only be tried by his peers or equals, and therefore a peer who is indicted for treason or felony or misprision of treason or felony can only be tried by peers (q).

If Parliament is sitting, the trial is in the court of the King in Parliament, if it is not sitting, it is before the court of the Lord High Steward of Great Britain, who is appointed *pro hac vice* only.

Where the trial is before the King in Parliament, a Lord High Steward is also appointed, but he is rather a speaker *pro tempore* or chairman of the court than judge (r).

Courts of the  
Universities  
of Oxford and  
Cambridge.

556 The courts of the chancellors of the Universities of Oxford and Cambridge have jurisdiction to try misdemeanours committed by resident members of the university and their servants.

If a prosecution for any such misdemeanour is commenced in the ordinary courts, the chancellor of the university may claim cognisance of the offence, and if the claim is made in due time and form, the case is withdrawn to the jurisdiction of the university court (s).

The chancellors of the universities, acting through their vice-chancellors, have also a special power of arresting and imprisoning females suspected of immorality and found consorting with undergraduates of the university (t).

(p) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 1. See title CORONERS, Vol. VIII., p. 239.

(q) The privilege cannot be waived (3 Co. Inst. 30, *Dacre's (Lord) Case* (1534), Kel. 56). It extends to peers under age, Scotch and Irish peers, although they have no seat in the House of Lords, peeresses by birth and by marriage, and the widow of a peer, unless she is subsequently married to a commoner (1 Bl. Com. 262). The privilege does not extend to Bishops, who, even if they have a seat in the House of Lords, are not peers by virtue of their office, but are triable as commoners (Erskine May, *Parliamentary Practice*, 11th ed., p. 669). The indictment for treason or felony or misprision of treason or felony must first be found in a court of oyer and terminer or general gaol delivery or a court of quarter sessions which has jurisdiction over the offence, and must then be removed by *certiorari* (3 Co. Inst. 28).

(r) 4 Bl. Com. 258. For a modern instance of a trial before the King in Parliament, see *Russell's (Earl) Case*, [1901] A. C. 446. As to both these courts, see title COURTS, pp. 19, 26, *ante*.

(s) See 13 Eliz. c. 29. *Castle v. Lushfield* (1670), Hard. 505, *Welles v. Trakern* (1740), Willes, 233, *Kendrick v. Kynaston* (1764), 1 Wm. Bl. 454, *Hayes v. Long* (1766), 2 Wils. 310, *R. v. Agar* (1772), 5 Burr. 2820, *R. v. Routledge* (1780), 2 Doug. (K.B.) 531, *Williams v. Bruckenden* (1809), 11 East, 543, *Broune v. Renouard* (1810), 12 East, 12, *Thornton v. Ford* (1812), 15 East, 634, *Ginnett v. Whittingham* (1836), 16 Q. B. D. 761. As regards Cambridge, the right to claim cognisance is limited to proceedings in which a member of the university is a party (Cambridge Award Act, 1856 (19 Vict. c. xvii), s. 18). In cases of treason, felony and mayhem, if cognisance is claimed, the offence is tried in the court of the Lord High Steward of the university and a jury (see 4 Bl. Com. 276). See further title COURTS, pp. 149 and 187 *ante*.

(t) See *Kemp v. Neville* (1861), 10 C. B. (N.S.) 523, *Ex parte Daisy Hopkins*, (1891), 61 L. J. (Q.B.) 240, Universities Act, 1825 (6 Geo. 4, c. 97).

**557.** Criminal jurisdiction in regard to offences which are punishable, and offences which are not punishable, by the ordinary courts is exercised over persons subject to military law by courts-martial instituted under the Army Act, 1881 (u), but such persons are not exempt from the jurisdiction of the ordinary courts in cases where both the ordinary courts and the courts-martial have jurisdiction (v).

As regards persons subject to naval law, a similar jurisdiction is exercised by courts constituted under the Naval Discipline Act, 1866 (w), but this jurisdiction does not exclude that of the ordinary civil courts (a).

Military and naval courts are not bound by the ordinary criminal law, except in so far as that law has been incorporated in the Acts which authorise the establishment of such courts (b). Such courts, however, are subject to the controlling authority of the High Court of Justice, which will be exercised if they exceed their jurisdiction (c).

**558** The ecclesiastical courts, which exercise a jurisdiction of a criminal nature over the clergy and other members of the Church of England, do not administer the criminal law of the realm, but proceed according to the canon law or the special statutes which give these courts jurisdiction (d).

### SECT. 3.—*The Limits of Criminal Jurisdiction*

**559** English courts exercise criminal jurisdiction (1) in respect of acts done by all persons, whether British subjects or aliens, within the territory of England, or on board a British ship on the high seas, or in places where great ships generally go, or on the open sea within the territorial waters of the King's dominions, (2) in respect of acts done by British subjects on land abroad, or on any ship on the high seas which is not British.

Jurisdiction in respect of acts committed in England is the jurisdiction of the common law. Jurisdiction in respect of acts committed on board a British ship on the high seas is the Admiralty jurisdiction. Jurisdiction in respect of acts committed elsewhere is derived from statute (e).

(u) 44 & 45 Vict. c. 58, ss. 69, 70.

(v) *Ibid.*, s. 162, and see title COURTS, p. 108, *ante*.

(w) 29 & 30 Vict. c. 109, ss. 56, 58.

(a) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 101.

(b) See title COURTS, p. 97, *ante*.

(c) See *Grant v Gould* (1792), 2 Hy Bl 69, at p. 100. As to liability in respect of acts done under martial law, see *Ex parte Marais*, [1902] A. C. 109, P. C., charge of COCKBURN, O. J., to the grand jury in *R v Nelson* (1867), ed. by F. Cockburn, charge of BLACKBURN, J., to the grand jury in *R v Eyre* (1868), reported by W. F. Finlason, 55; *Phillips v Eyre* (1870), L. R. 6 Q. B. 1, Ex. Ch.; A. V. Dicey, *Introduction to the Study of the Laws of the Constitution*, 7th ed., 538.

(d) See title ECCLESIASTICAL LAW.

(e) *Macleod v A.-G. for New South Wales*, [1891] A. C. 455, P. C. All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and except over British subjects the King and the Legislature have no power out of this country (*ibid.*, per Lord HALSBURY, L. C., at p. 458); *Sirdar Gurdial Singh v Rajah of Faridkot*, [1894] A. C. 670, P. C., per Lord SELBORNE, at p. 683, *Badische Anilin und Soda Fabrik v Basle Chemical*

SECT. 3.  
Courts of  
Special  
Criminal  
Jurisdiction

Courts-  
martial

Naval courts

Ecclesiastical  
courts

Persons over  
whom  
English  
criminal  
courts  
exercise  
jurisdiction.

## SECT 3

**The Limits of Criminal Jurisdiction.**

Criminal jurisdiction at common law.

SUB-SECT 1—*Common Law Jurisdiction.*

**560** At common law the exercise of criminal jurisdiction is limited to crimes committed within the land of England with its ports and harbours, bays, gulfs and estuaries, and so much of the outer coast as extends to low-water mark (*f*) The courts of common law have always exercised jurisdiction over all persons who committed crimes within these limits, whether such persons were subjects of the King or resident aliens or mere casual and temporary alien visitors (*g*) In respect of acts done outside those limits there was no jurisdiction at common law (*h*)

*Works*, [1898] A. C. 200 The jurisdiction over acts done on a British ship is founded on the fiction that "a ship which bears a nation's flag is to be treated as a part of the territory of that nation" (*R v Anderson* (1868), L. R. 1 C. O. R. 161, *per* BLACKBURN, J., at p. 163, and *per* BOVILL, C. J., at p. 166, *Forbes v Cochrane* (1824), 2 B. & C. 446, at p. 464, and at p. 467, but see *R v Lesley* (1860), Bell, C. O. 220, *per* ERLE, C. J., at p. 233, "although an English ship in some respects carries with her the laws of her country in the territorial waters of a foreign state, yet in other respects she is subject to the laws of that state as to acts done to the subjects thereof" The jurisdiction over British subjects in respect of acts committed abroad is purely statutory, and is based on the allegiance of the subject to the Sovereign, and on the power of the Sovereign, by reason of this allegiance, to pass laws for the regulation of the conduct of subjects wherever they are See *Sussex Peerage Case* (1844) 11 Cl. & Fin. 85, H. L., *per* TINDAL, C. J., at p. 146 Apart from statute the general principle of criminal jurisprudence is that the quality of an act depends on the law of the place where it is done (*A-G for the Colony of Hong Kong v Kwok-a-Sung* (1873), L. R. 5 P. C. 179, *per* MELLISH, L. J., at p. 199)

(*f*) *R v Keyn* (1876), 2 Ex. D. 60, C. O. R., at p. 162 England includes Wales (stat. 27 Hen. 8, c. 26), but does not include Scotland, Ireland, the Isle of Man and the Channel Islands See *Re Mitchell, Ex parte Cunningham* (1884), 13 Q. B. D. 418 C. A.

(*g*) *R v Keyn, supra*, at p. 160

(*h*) *Ibid.*, at p. 168 For the purposes of criminal jurisdiction, an act may be regarded as done within English territory, although the person who did the act may be outside the territory, for instance, a person who, being abroad, procures an agent to commit a crime in England is deemed to commit an act in England (*R v Brisac* (1803), 4 East, 164, *Mr Justice Johnson's Case* (1805), 29 State Tr. 81, at pp. 462, 499) If a person, being outside England, sends to England by post or otherwise with a criminal intent a fraudulent document or a libellous or obscene publication, he commits an act in England for which he is amenable to English jurisdiction (*R v Munton* (1793), 1 Esp. 62, *R v Oliphant*, [1905] 2 K. B. 67, C. O. R., *R v Burdett* (1820), 4 B. & Ald. 95, *R v De Murny*, [1907] 1 K. B. 388, C. C. R.) Such a person, even though a foreigner, can be tried if he comes to England (*R v De Murny, supra*, *R v Oliphant*, [1905] 2 K. B. 67, C. O. R.) If a person, being outside English territory, were intentionally to fire at and kill a person in English territory in such a manner that the act amounts to murder, the person who fired could be tried for murder in England (*R v Coombes* (1780), 1 Leach, 388, and see *R v Rogers* (1877), 3 Q. B. D. 28, C. C. R., *per* FIELD, J., at p. 34), Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 10 (but see *Badische Anilin und Soda Fabrik v. Badische Chemical Works*, [1896] A. C. 200, at p. 204) *Quære*, whether the same rule would apply to manslaughter by negligence (see *R v. Keyn* (1876), 2 Ex. D. 63, C. O. R., at p. 234). A person who makes a false representation outside England, and by means of such representation obtains goods in England, may be tried in England for the crime of obtaining goods by false pretences (*R v Elke*, [1899] 1 Q. B. 230, C. O. R.) If the false representation is made by a letter written and posted in England, but sent to an address abroad, and money is by means of such a letter sent from abroad to and received in England, a crime is committed which is triable in England (*R v. Holmes* (1883), 12 Q. B. D.

## SUB-SHOT 2.—Admiralty Jurisdiction.

## SHOT. 2.

## The Limits of Criminal Jurisdiction.

## Admiralty jurisdiction.

**561.** All acts done on a British ship, either on the high seas or in places where great ships go, are subject to the Admiralty jurisdiction, whether such acts are done by British subjects or by foreigners (i)

An act done on the high seas, but not on an English ship, is not, apart from statute, the subject of Admiralty jurisdiction, except in the case of piracy *jure gentium*, which is triable and punishable everywhere, no matter where or by whom it is committed (k).

23, C O R.), see p 281, *post* If an act is done by a foreigner outside England, and neither in English territorial waters nor on a British ship, the foreigner is not amenable to English criminal jurisdiction, although some consequence of the act may take place in England, *e.g.*, if a foreigner strikes someone abroad and the person struck comes to England and dies of the blow, there is no crime which is cognisable in England (*R v Lewis* (1857), 1 Dears & B 182, and see *R v Depardo* (1807), 1 Taunt. 26, *R v Mutton* (1836), 7 C & P 458) S 10 of the Offences against the Person Act, 1861 (24 & 25 Vict. c 100), has apparently no effect in a case of this kind (see note (q) on p 289, *post*) But the case will be otherwise where the act is a continuous one, some part of which is deemed to be performed in this country (see *R v De Murny* and other cases cited *supra*) An alien enemy who comes into the realm in a hostile way cannot be tried for treason, for the essence of that crime is violation of the allegiance which a subject or resident or commorant alien owes to the Sovereign, but which an alien enemy does not owe (*Perkin Warbeck's Case* (1500), 7 Co Rep 6 b) But an alien enemy who is a prisoner of war may, it seems, commit crimes for which he is triable and punishable here (see *Molier's Case* (1758), Foster 188, n., and the observations of Lord ELLENBOROUGH, O J, in *R v Johnson* (1806), 6 East, 583, at p 593, and *Sauvageot's* and *Acow's Cases*, cited in *R v Depardo*, *supra*, at p 32)

(i) See *R v Anderson* (1868), L. R. 1 C O R 161, *R v Keyn* (1876), 2 Ex D 63, C O R., at p 162, *R v Carr* (1882), 10 Q B D 76, C O R., *R v Allen* (1837), 1 Mood C O 494, Offences at Sea Act, 1536 (28 Hen 8, c. 15) In *R v Anderson*, *supra*, it was held that an American citizen serving on a British ship was rightly convicted at the Central Criminal Court for the manslaughter of another American citizen serving on the same ship in the river Garonne within French territory about ninety miles from the sea, but at a place where the tide ebbed and flowed and great ships went. And in *R v Carr*, *supra* (which was decided at a time when it was no offence to receive in England goods that had been stolen abroad, see p 680, *post*), it was held that a larceny committed on board a British ship while she was lying afloat in the river Maas at Rotterdam, and moored to the quay in a place where large vessels usually lay, was an act that took place within the jurisdiction of the Admiralty, and that persons who received the stolen goods in England could be tried at the Central Criminal Court. A hulk which retains the general appointments of a British ship, which is registered as a British ship and hoists the British ensign, but which is used as a floating warehouse, is sufficiently a British ship to be within the Admiralty jurisdiction (*R v Armstrong* (1875), 13 Cox, C O 184) It is not necessary that the criminal act should be completed on board the ship, if part of it is done on board (*ibid*) Where a British man-of-war, acting in supposed execution of a treaty which enabled a British man-of-war to seize a Brazilian vessel if it had slaves on board, captured a Brazilian vessel which did not have slaves on board, it was held that the capture, being unlawful, did not make the Brazilian vessel a British ship, and that a crime alleged to have been committed on the Brazilian vessel while it was in the possession of the British man-of-war was not cognisable in the English courts (*R v Souza* (1845), 1 Den, 104)

(k) *R v Keyn* (1876), 2 Ex D 63, C O R., at p 168, *A-G for Colony of Hong Kong v Kwok-a-Sing* (1873), L. R. 5 P O. 179 See for piracy *jure gentium*, p. 523, *post*.



**SECT. 8.**  
**The Limits**  
**of Criminal**  
**Jurisdiction.**

Trial by  
 commis-  
 sioners

**562.** As regards so much of the coast of England as is between high and low water mark, and as regards the estuaries of English rivers and land-locked bays *inter fauces terræ*, the common law and the Admiralty have concurrent jurisdiction (*l*).

**563** Crimes subject to Admiralty jurisdiction were originally tried by the Court of the Admiral, according to the civil law (*m*), but the criminal jurisdiction of such court was transferred by the Offences at Sea Act (*n*) to commissioners appointed by the King.

Such commissioners were to try offences committed within the Admiralty jurisdiction in such county as their commissions might direct, and "according to the common course of the laws of the realm used for such offences when done upon the land within the realm" (*o*). It is not now the practice to issue these commissions, as offences committed within Admiralty jurisdiction may now be tried by the ordinary superior criminal courts (*p*).

Trial of  
 crimes  
 subject to  
 Admiralty  
 jurisdiction  
 in ordinary  
 criminal  
 courts

**564** The Central Criminal Court has power to try offences committed on the high seas and other places within the jurisdiction of the Admiralty (*q*), and the justices of assize and other commissioners holding a court under any of the King's commissions of oyer and terminer or general gaol delivery may try any person for criminal acts done within the Admiralty jurisdiction, if such person is committed to, or imprisoned in, any gaol in any county or franchise within the limits of their commissions (*r*).

(*l*) *R v Keyn* (1876), 2 Ex D 63 C C R, at p 168, see also stat. (1391) 15 Rich 2, c 3, *R v Bruce* (1812), Russ & Ry 243, *R v Manmon* (1846), 2 Cox, C C 158, C C R, *R v Cunningham* (1859), Bell, C C 72. See also title ADMIRALTY, Vol I, p 59.

(*m*) See Offences at Sea Act, 1536 (28 Hen 8, c 15), preamble.

(*n*) (1536) 28 Hen 8, c 15.

(*o*) *Ibid*. For instances of trials under commissions issued under this statute, see *Dawson's Case* (1696), 13 State Tr 451, *Bonnet's Case* (1718), 15 State Tr 1231, *Callin's Case* (1802), 25 State Tr 178, *R v Bruce* (1812), Russ & Ry 243. The statute simply transferred the jurisdiction of the Court of the Admiral to the common law courts to be exercised according to the procedure of the common law (*R v Keyn, supra*, at p 169). The jurisdiction of commissioners appointed under this statute was enlarged by stat. (1698) 11 Will 3, c 7, the Piracy Act, 1721 (8 Geo 1, c 24), the Piracy Act, 1744 (18 Geo 2, c 30), and the Slave Trade Act, 1824 (5 Geo 4, c 113), which extended the definition of piracy (see p 526, *post*). The Offences at Sea Act, 1799 (39 Geo 3, c 37), extended the jurisdiction of the commissioners to every offence committed on the high seas, out of the body of a county, which would have been an offence if it had been committed upon the land (see *R v Bailey* (1800), Russ & Ry 1, *R v Amarro* (1814), Russ & Ry 286. See Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 26).

(*p*) See note (*r*), *infra*.

(*q*) Central Criminal Court Act, 1836 (4 & 5 Will 4, c 36), s 22, see *R v Wallace* (1841), 2 Mood C C 200.

(*r*) Admiralty Offences Act, 1844 (7 & 8 Vict c 2), s 1. The Admiralty Offences Act, 1826 (7 Geo 4, c. 38), gave justices of the peace power to take examinations concerning offences committed within the Admiralty jurisdiction and to cause persons who committed such offences to be apprehended. The Admiralty Offences Act, 1841 (7 & 8 Vict c 2), s 3, empowers justices to commit such offenders to the prison to which a person would be committed who committed an offence on land within the jurisdiction of the justices (see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s 2). As to the trial of persons who, within the jurisdiction of the Admiralty become accessories to a felony, see the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), ss. 7, 9, and see *R. v.*



**565.** All the indictable offences mentioned in the Larceny Act, 1861 (s), the Malicious Damage Act, 1861 (r), the Forgery Act, 1861 (u), the Coinage Offences Act, 1861 (x), and the Offences against the Person Act, 1861 (a), if committed within the Admiralty jurisdiction, are to be deemed to be offences of the same nature and punishable in the same manner as if they had been committed

SECT. 4.  
The Limits  
of Criminal  
Jurisdiction.

*Wallace* (1841), 2 Mood C C 200 Persons who have committed offences within the Admiralty jurisdiction may be tried in English colonies, or in places abroad outside the British dominions, where the King has power of jurisdiction (see Offences at Sea Act, 1806 (46 Geo 3, c 54) Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict c 96), s 1, and Foreign Jurisdiction Act, 1890 (53 & 54 Vict c 37), s 6) All offences against property or persons committed either ashore or afloat out of the King's dominions by any master, seaman or apprentice who, when the offence is committed, is, or within three months previously has been, employed in any British ship, are punishable and triable as if they were offences committed within the Admiralty jurisdiction, Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 687, and see *R v Dudley* (1884), 14 Q B, D 273, at p 281, which decided, under the corresponding section of the Merchant Shipping Act, 1854 (17 & 18 Vict c 104), that the judge of assize sitting at Exeter had jurisdiction to try seamen formerly belonging to a British ship which had been wrecked who committed murder in an open boat on the high seas Any court in the King's dominions which could try an offence committed on board a British ship within the limits of its ordinary jurisdiction may try a British subject charged with committing an offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or an alien charged with committing an offence on board a British ship on the high seas, if such person is found within the jurisdiction of the court (Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 686, see *R v Lopez* (1858), 1 Dears & B 525, and *R v Menham* (1858), 1 F & F 369) The last-mentioned section applies, even although the prisoner is a foreigner and has been brought within the jurisdiction of the court against his will (*R v Lopez, supra*) If a person on a British ship in the territorial waters of a foreign state, acting under the lawful orders of the foreign state, commits an act in respect of subjects of the state which would be criminal but for such orders (e.g., if he assaults and arrests such subjects), such person cannot be prosecuted in an English criminal court for such an act, so long as it is covered by the authority of the foreign state, but if such an act is continued outside the jurisdiction of the state (e.g., by bringing the subjects of the foreign state in confinement to England), then such person can be punished in respect of so much of the act as is done outside the territory of the foreign state (*R v. Lesley* (1860), Bell, C C 220, see *Dubree v Napier* (1836), 2 Bing (N C) 781) The Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 686, does not apply to a foreigner on a foreign ship committing a negligent act which causes a collision with a British ship and the death of a person on board the British ship in consequence of such collision, such an act is not "an offence committed on board a British ship" (*R v Keyn* (1876), 2 Ex D 61, C C R). "Ship" means for the purposes of the Merchant Shipping Act, 1894 (57 & 58 Vict c 60), every description of vessel used in navigation not propelled by oars (s 742) Ss 686 and 687 of the Act apply to all British ships whether registered or not (*ibid*, s 72, *R v Allen* (1866), 10 Cox, C C 405, *R v. Seberg* (1870), L R. 1 C C R 264) The fact that a ship carries the British flag and is registered as a British ship is *prima facie* evidence that it is a British ship, but if the ship is in fact owned by an unqualified person, e.g., a foreigner, it is not a British ship, and the English courts have no jurisdiction to try an offence committed by a foreigner on board such a ship (*R. v. Bornsen* (1865), Le & Ca 545).

(s) 24 & 25 Vict c 96, s 115.

(r) 24 & 25 Vict c 97, s 72

(u) 24 & 25 Vict c 98, s 50.

(x) 24 & 25 Vict c 99, s 35

(a) 24 & 25 Vict. c 100, s 68

**SECT. 3**  
**The Limits**  
**of Criminal**  
**Jurisdiction**

Crimes  
 committed  
 within the  
 territorial  
 waters

upon the land in England, and may be tried in any county in England in which the offender is apprehended or is in custody, in the same manner in all respects as if they had been actually committed in that county or place (*b*)

**566.** Acts done on the open sea, within the territorial waters of the King's dominions, but not on a British ship, are not within common law jurisdiction, nor were they formerly within Admiralty jurisdiction (*c*). But such acts, although committed on board of, or by means of, a foreign ship have been brought by statute (*d*) within Admiralty jurisdiction, and subject to certain conditions (*e*) are triable as if they had been committed on a British ship

**SUB-SECT. 3 — Jurisdiction in respect of Crimes committed out of England**

Treason  
 and  
 oppression.

**567** Treasons committed by a British subject out of England, and oppressions committed out of England by colonial governors, are triable in the King's Bench Division of the High Court of Justice, or before such commissioners and in such shire of the realm as may be assigned by the King's commission (*f*)

(*b*) See *R v Pail* (1862), 1 *L. & C.* 231, which decided that a person who stole goods on a British ship on the high seas between Madras and Point de Gallo was rightly tried under s 115 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), in the court of quarter sessions in the borough of Southampton, where he was apprehended

(*c*) See *R v Keyn* (1876), 2 *E. & D.* 63, O. O. R., which decided that a foreigner in command of a foreign ship, which while passing in the open sea within three miles of the shore of England ran into a British ship and killed a passenger on board the British ship, was not amenable to English criminal jurisdiction, although the facts were such as to amount to manslaughter in English law

(*d*) Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73)

(*e*) Proceedings under the Act against a person who is not a British subject cannot be instituted in the United Kingdom, except with the consent of one of the principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient, or in any of the King's dominions out of the United Kingdom, except with leave of the governor of the part of the dominions in which the proceedings are to be instituted, and on his certificate that it is expedient that such proceedings should be instituted (Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 3). In this Act the word "ship" has a more extensive meaning than in the Merchant Shipping Act, 1891 (57 & 58 Vict. c. 60) (see s. 741), and includes every description of ship, boat, or other floating craft (Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 7). By "territorial waters" is meant such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of the King's dominions as is deemed by international law to be within the King's territorial sovereignty, for the purpose of any offence declared by the Act to be within Admiralty jurisdiction, any part of the open sea within one marine league of the coast, measured from low water mark, is to be deemed to be open sea within the territorial waters of the King's dominions (Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 7). *Quære* whether any offence is triable under the Territorial Waters Act, 1878 (41 & 42 Vict. c. 73), except an offence committed on a "ship" as defined by that Act. As to foreign sea-fishing boats within the exclusive fishery limits of the British Islands, see Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), s. 18, and title FISHERIES. See also *Mortensen v. Peters* (1906), 8 *F. (Just. Cas.)* 93

(*f*) Stat. (1843) 35 Hen. 8, c. 2; 3 Co. Inst. 11, 4 Co. Inst. 124, (1698) stat. 11 Will. 3, c. 12, and see Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34, Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (and see the rule under that section, Archbold's Criminal Pleading etc., 23rd ed., p. 196). For

**568.** If any murder or manslaughter is committed on land out of the United Kingdom, whether within the King's dominions or not, and whether the person killed is or is not a subject of the King, any subject of the King who is accused of committing the offence may be tried in any county or place in England or Ireland in which he is apprehended or is in custody in the same manner as if the offence had been actually committed in that county or place (*g*)

**SECT. 2.**  
**The Limits of Criminal Jurisdiction.**  
Murder etc.

**569** Any person who within the realm or in any place belonging to the realm wilfully and maliciously sets on fire any of the King's ships of war, arsenals, dockyards etc., may be tried for the offence either in any shire or county within the realm or in the place where the offence is committed (*h*)

Burning King's ships etc.

**570** A subject of the King is triable in England, if without the King's dominions he unlawfully and maliciously does any act with intent to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or cause serious injury to property, or who conspires to cause such an explosion (*i*)

Offences under Explosive Substances Act, 1883.

**571** A master or any other person belonging to a British ship who wrongfully forces on shore or leaves behind in any place on shore or at sea, in or out of the King's dominions, a seaman or apprentice

Merchant Shipping Act, 1894.

a modern instance of a trial under stat 35 Hen 8, c 2, in the King's Bench Division of the High Court of Justice, see *R v Lynch*, [1903] 1 K B. 444, where a British subject was tried at the Royal Courts of Justice, London, for treason committed in South Africa. Treasons committed in Scotland are triable in Scotland, and not, it seems, in England (Treason Act, 1708 (7 Ann c. 21), s. 4), unless by virtue of a special statute (see *R v Kinloch* (1746), 18 State Tr 395, *R v Hardie* (1820), 1 State Tr (N S) 609, at p. 661). Treasons committed by a native of Scotland upon the high sea or in any place out of Great Britain are triable either in Scotland or in such shire, stewartry, or county of Great Britain as shall be assigned by the King's commission (Treason Act, 1708 (7 Ann c. 21), s. 7). For instances of persons tried in England for treasons committed in Ireland, see *Macquarr's (Lord) Case* (1646), 4 State Tr 633, *Plunket's Case* (1681), 8 State Tr 447, 3 Co Inst. 11. As to offences committed out of England by persons in the public service, see p. 289, *post*.

(*g*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 9. See *R v Nelson* (1867), reported by F Cockburn. An alien while resident here is, it seems, a subject of the King within the meaning of this statute, as far as respects his liability for acts done in England, but not for acts done abroad (*R v Bernard* (1858), 8 State Tr (N S) 887, *per* Lord CAMPBELL, O J, at p. 1055, see Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 4). As to a conspiracy or a solicitation to murder an alien who is outside the King's dominions, see Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 4, which provides for most of the cases which were raised, but not decided, in *R v Bernard*, *supra*. It seems that to constitute an offence under that section some act must be done in England. An English subject who conspires abroad with someone in England to commit one of the acts prohibited by the section might, it seems, be tried in England, if his fellow-conspirator did any overt act in England in pursuance of the conspiracy (see Greaves, Criminal Law Consolidation Acts, 2nd ed., p. 37). A person who has been tried and convicted or acquitted by a court of competent jurisdiction in a foreign country cannot in respect of the same offence be tried again here (*R v Roche* (1776), 1 Leich, 134). As to the venue in cases of murder and manslaughter, where the injury is inflicted in England or Ireland and the death occurs elsewhere, or *vice versa*, see p. 289, *post*.

(*h*) 12 Geo 3, c 24. See p. 773, *post*.

(*i*) Explosive Substances Act, 1883 (46 Vict. s. 3), s. 3, see p. 776, *post*.

**SECT. 3.**  
**The Limits**  
**of Criminal**  
**Jurisdiction**

to the sea service before the completion of the voyage for which such seaman or apprentice was engaged, or before the return of the ship to the United Kingdom, is guilty of a misdemeanour (*k*), and may be tried in the place where the offence was committed, if such place is in the King's dominions, or in any place in the King's dominions in which the offender may be (*l*)

**Foreign**  
**Enlistment**  
**Act, 1870**

**572** The Foreign Enlistment Act, 1870 (*m*), extends to all the dominions of the King, including the adjacent territorial waters (*n*)

Any subject of the King or any foreigner temporarily resident in any part of the King's dominions who, being in the King's dominions, acts in contravention of the Act commits an offence for which he may be tried in the place where the offence was wholly or partly committed, if such place is in the King's dominions, or in any place in the King's dominions where the offender may be (*o*)

**Official**  
**Secrets Act,**  
**1889.**

**573** The acts which are made offences by the Official Secrets Act, 1889 (*p*), if committed by anyone in any part of the King's dominions and if committed by British officers or subjects elsewhere, are punishable in England or in the place where the offence was committed (*q*)

**Commis-**  
**sioners for**  
**Oaths Act,**  
**1889.**

**574** An offence under the Commissioners for Oaths Act, 1889 (*r*), whether committed within or without the King's dominions, may be tried in the county or place in the United Kingdom in which the person charged with the offence was apprehended or is in custody, and the offence is to be deemed to have been committed in that county or place (*s*)

**Foreign**  
**Marriage**  
**Act, 1892.**

**575** A person who knowingly and wilfully makes a false oath or signs a false notice under the Foreign Marriage Act, 1892 (*t*), for the purpose of procuring a marriage, or who forbids a marriage under that Act by falsely representing himself to be a person whose consent to the marriage is required by law, if he knows such representation to be false, may be tried in any county in England as if the offence had been committed in that county (*u*)

**Receipt of**  
**property**  
**stolen out of**  
**the United**  
**Kingdom.**

**576** If a person without lawful excuse receives or has in his possession in England property stolen outside the United Kingdom, with guilty knowledge that it has been stolen, he commits an offence triable in England (*v*)

(*k*) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 187

(*l*) *Ibid.*, s 684

(*m*) 33 & 34 Vict c 90 See p 628, *post*.

(*n*) *Ibid.*, s 2

(*o*) *Ibid.*, s 16

(*p*) 52 & 53 Vict c 52 See p 480, *post*

(*q*) *Ibid.*, s 6 (1) The place of trial for such offences is either any competent British court in the place where the offence was committed or the High Court or the Central Criminal Court in England (s. 6 (2))

(*r*) 52 Vict c 10. See p 536, *post*.

(*s*) *Ibid.*, s 9

(*t*) 55 & 56 Vict. c 23

(*u*) *Ibid.*, s. 15 The acts which are made criminal by this section are, from their nature, mostly acts which are done outside the King's dominions, so far as regards such acts, the section, it seems, only applies to British subjects (*R. v. Jameson*, [1896] 2 Q. B. 425, at p 430)

(*v*) Larceny Act, 1896 (59 & 60 Vict. c. 52), s 1 (1), see *R. v. Pausse* (1897),

**577.** It is an offence triable in England and elsewhere in the King's dominions for a subject of the King to kill, capture, or pursue fur seals within a zone of sixty miles around the Pribiloff Islands at any time or in a certain defined area of the Pacific Ocean in any year from the 1st May to the 31st July (k)

**578** A statute, unless it contains signs of a contrary intention, applies only to the United Kingdom, and if it makes certain acts criminal, such acts are in the absence of provision to the contrary only criminal, even in the case of British subjects, if done within the United Kingdom (l)

**579** Except in the case of piracy *jure gentium*, no person who is not a subject of the King can be tried in England in respect of any act which he commits outside the King's dominions (m).

#### SECT. 4 — Venue

**580.** Every criminal court, except the High Court of Parliament and the King's Bench Division of the High Court of Justice, has its jurisdiction limited to some part of England, and unless expressly empowered by statute cannot try any crimes other than those committed within the area of its jurisdiction

**581** The proper area of jurisdiction for the trial of a crime by indictment is called the venue (n)

The venue must be laid in the margin of every indictment, and no court has jurisdiction to try an indictment if the venue is not properly laid (o)

SECT. 3.  
The Limits  
of Criminal  
Jurisdiction.

Killing seals  
in Behring  
Sea.

Statutes  
generally  
limited to  
United  
Kingdom.

Foreigners.

Area of  
jurisdiction  
of courts  
limited

Venue.

61 J P 536, and p 650, *post* As to stealing etc in one part of the United Kingdom and having possession of the stolen property in another part, see pp 288, 681, *post*

(k) Behring Sea Award Act, 1894 (57 Vict c 2), s 1, in the First Schedule, arts 1, 2 See also the Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 745 (f)

(l) See *R. v Jameson*, [1896] 2 Q B 425, *per* Lord RUSSELL, C J, at p 430, *R v Keyn* (1876), 2 Ex D 63, C O R, *per* CROCKBURN, C J, at p 210, and compare *Niboyet v Niboyet* (1878), 4 P D 1, O A, at p 19, *Polyskoun v Heddon* (1890), 25 Q B D 129, O A, *per* Lord ESHER, M R, at p 145, *Jefferys v Boosey* (1854), 4 H L Cas 815, *per* Lord CRANWORTH, at p 955, *Cope v Doherty* (1858), 27 L J (CH.) 600, O A, *Thomson v Advocate-General* (1845), 12 Cl & Fin 1, H L, *Ex parte Blair* (1879), 12 Ch D 532, *Adam v British and Foreign Steamship Co.*, [1898] 2 Q B 430, *Davidson v Hill*, [1901] 2 K B 606, *Roseler v Cahman* (1853), 22 L J (EX.) 128, *per* POLLOCK, C B, at p 129, *Tomlin v Pearson*, [1909] 2 K B 61, at p 64

(m) *R v Lewis* (1857), 1 Dears & B 182, *R v Depardo* (1807), 1 Taunt. 26, *R v Jameson*, [1896] 2 Q B 425, at p 430 And see p 272, *ante*

(n) Venue means the place from which a jury could be summoned originally by the writ of *venire facias juratores* (now abolished, see Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s 104) to try the issues in civil and criminal trials According to some authorities venue is the same as *vicene* (*vicinetium*) or vicinage, and means a "place next to that where anything that comes to be tried is supposed to be done" (*Termes de la Ley, sub nom Venue*). Originally on every trial some of the jury had to be of the same hundred, or sometimes of the same parish or neighbourhood, in which the thing was supposed to be done (*ibid*) See generally as to venue, *British South Africa Co. v Companhia de Mozambique*, [1893] A C 602

(o) The area of jurisdiction must be either a county, an assize district, the

## SECT. 4.

## Venue.

Common  
law ruleSUB-SECT 1 — *At Common Law*

**582** The common law rule is that the proper venue for the trial of a crime is the area of jurisdiction in which the place is where the crime was committed (*p*).

Statutory provision is made for the trial of certain crimes (*q*) before courts other than those within the area of whose jurisdiction such crimes were committed, but, in the absence of statutory provision, the common law rule governs the venue

Locality of  
a crime.

**583** The locality of a crime varies with the nature of the crime. If the crime is an act of omission, the place where the crime is committed is the place where the act which is omitted ought to have been done (*r*). If the crime consists of an act or acts of commission which is or are done in one place, that is the place where the crime is committed (*s*).

district of the Central Criminal Court, or a city or borough where such borough has a separate court of quarter sessions. The venue is thus laid — In the case of an indictment found by the grand jury of a county, "County of Worcester to wit," of an assize district, "County of Warwick, Birmingham Division, to wit" (see Order in Council of 26th June, 1884, Stat R & O Rev, VII, 791), in the case of an indictment found at the Central Criminal Court (the district of which for purposes of venue is to be deemed to be one county), "Central Criminal Court to wit" (Central Criminal Court Act, 1834 (4 & 5 Will 4, c 36), s 3), in the case of an indictment found by the grand jury of a city or borough which is a county of itself, "County of the City of Worcester to wit" or "County of the Town of Newcastle-upon-Tyne to wit", in the case of an indictment found by the grand jury of a borough which is not a county of itself, "Borough of Wolverhampton to wit"

(*p*) *Pryne* on the Fourth Institute, 92, 1 Hale, P O 651, 652, 2 Hale, P O 163, *R v Gough* (1781), 2 Doug (K B) 791, *R v Weston* (1770), 4 Burr 2807, at p 2511

(*q*) See p 283, *post*

(*r*) *R v Milner* (1846), 2 Car & Ku 310. So in the case of an act of commission, such as embezzlement, when there is no evidence of embezzlement except non accounting, the venue may be laid in the place where the non accounting occurred, but this does not apply where there is distinct evidence of misappropriation elsewhere, for then the offence is triable in either place (see *R v Dawson and Gordon* (1855), 7 Cox, C C 158, *per ALDERSON*, B, at p 162, *R v Murdoch* (1851), 5 Cox, C C 360, C O R., *R v Taylor* (1803), Russ & Ry 63, *R v Rogers* (1877), 3 Q B D 28, C. O. R., *R v Hobson* (1803), Russ. & Ry 56, *R v Treadgold* (1878), 14 Cox, C C 220, C O R.

(*s*) Thus where the charge is one of perjury in swearing a false affidavit, the crime is complete by the act of swearing, and the place where that act is done is the place where the crime is committed. If the affidavit is used in another place, such use is no part of the crime of perjury, but is an independent crime for which the offender may be tried in the place where the affidavit is used, the venue must be laid where the false oath is taken, not where the affidavit is used, the crime is complete, even if no use is made of the affidavit (*R v Crossley* (1797), 7 Term Rep 310). If perjury is committed within the limits of a city which is a county of itself on the trial of an issue before a jury of the county at large, the offence is triable before a jury either of the city or of the county at large (*R v Gough* (1781), 2 Doug (K B) 791, *R v Jones* (1833), 6 C & P 137). The crime of bigamy is committed in the place where the second marriage took place (1 Hale, P. C 694), although, in order to prove the crime, evidence must be given of the first marriage, which may have been solemnised elsewhere. See further as to the venue in bigamy, Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s 57, and p. 284, note (*c*), *post*. As regards forgery, the fact that the accused was seen in the place where the forged document was uttered in company with the utterer is evidence that the forgery took place there and justifies the venue

SECT. 4.  
Venue.  
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A criminal enterprise may consist of a continuing act which is done in more places than one or of a series of acts which are done in several places. In such cases, though there is one criminal enterprise, there may be several crimes; and a crime is committed in each place where a complete criminal act is performed, although such act may be only a part of the enterprise (t)

**584** What constitutes a complete criminal act is determined by the nature of the crime. Thus, as regards continuing acts, in the case of sending by post or otherwise a libellous or threatening letter, or a letter to provoke a breach of the peace, a crime is committed, both where the letter is posted or otherwise sent, and also where it is received, and the venue may be laid in either place (a).

In obtaining money etc by false pretences the gist of the offence is the obtaining, and the crime is committed where the money is obtained, and not where the false pretences are made (b).

If money obtained by false pretences is sent by letter at the request of the accused, the crime is committed both where the letter is posted and where it is received (c).

As regards simple larceny, if property is stolen in one county and

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being laid there (*R v Corah* (1827), 2 Russell on Crimes, 6th ed., 658—659, but see *Parker's Case* (1796), 2 Leach, 775)

(t) Many of these cases are provided for by statute (e.g., Criminal Law Act, 1828 (7 Geo. 4, c. 64), s. 12), by which if a felony or misdemeanour is begun in one county and completed in another it may be tried in either (*R v Jones* (1830), 1 Russell on Crimes, 6th ed., 5, and p. 285, *post*), but there are many cases to which the statute is not applicable, e.g., where some of the acts relating to a crime are done out of England (see *R v Peters* (1886), 16 Q. B. D. 636, C. O. R., *R v Ellis*, [1899] 1 Q. B. 230, C. O. R.) In such cases the venue is determined by the rules of the common law.

(a) *R v Burdett* (1820), 4 B. & Ald. 95, *R v Girdun* (1776), 2 East, P. O. 1120, *R v Esser* (1767), 2 East, P. O. 1125, *R v Williams* (1810), 2 Camp. 506, *Trial of the Seven Bishops* (1688), 12 State Tr. 183, 354, *R v Watson* (1808), 1 Camp. 215, *R v Johnson* (1805), 7 East, 65.

(b) *R v Ellis*, [1899] 1 Q. B. 230, C. O. R., *R v Buttery* cited in *R v Burdett*, *supra*, at p. 179, and see *R v Holmes* (1883), 12 Q. B. D. 23, C. O. R.

(c) *R v Jones* (1830), 1 Den. 551, *R v Leech* (1856), 7 Cox, C. O. 100. But where the charge is that of attempting to obtain money etc. by false pretences, the locality of the crime is, it seems, the place where the false pretences are made. If goods are obtained by false pretences in one county and removed into another, the trial must be in the county where the goods were obtained (*R v Stanbury* (1862), L. & C. 128). An undischarged bankrupt commits the offence of obtaining credit to the amount of £20 or upwards under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 31, in the place where he obtains goods on credit (*R v Dawson* (1888), 16 Cox, C. O. 556, C. O. R.). If an undischarged bankrupt living at N, in England, writes to a person in Ireland and orders goods to be sent on credit to N from Ireland, and the goods are so sent and are received in N, the offence is committed in N (*R v Peters*, *supra*, and see *R v Juby* (1886), 55 L. T. 788, C. O. R., *R v Ellis*, *supra*). A defendant by false pretences in letters written in London and sent to Paris induced stockbrokers in Paris to give him credit and to buy stock for him, no scrip or shares were delivered to him, but in some cases the stock was sold at a profit and he received the difference between the prices at which the stock was bought and those at which it was sold; in other cases the stock bought on his account was not sold, and the stockbrokers in Paris had to pay for it, it was held that he had obtained credit in London, and could be tried in the Central Criminal Court (*R v Hurwitz*, C. C. O. Sessions Papers, November, 1906, 22).



**SECT. 4**  
**Venue.**

carried by the thief into other counties, the venue may be laid either in the county where he originally stole the goods or in any county into which he takes them *animo furandi*, and this is so even though the removal into one county may be after a considerable interval of time (*d*), but this rule does not apply where the stolen property is taken into a county by the thief after his arrest in the company of and with the consent of the constable who has charge of him (*e*).

The rule that a person who steals property in one county and removes it into another may be tried in the second county only applies to simple larceny, and does not apply to compound larceny, *i.e.*, larceny with some aggravating circumstance, as taking from the house or person (*f*). A person who commits compound larceny in one county and carries the stolen property into another county cannot be convicted of compound larceny in the second county, but may, it seems, be indicted and tried in the second county for simple larceny (*g*).

The offence of receiving stolen property is committed and triable in the place where the property is received (*h*).

The offence of abduction is committed not only in the county in which the woman or girl is originally taken, but also in any county into which she is carried by force (*i*).

A person who in one place fires a shot or throws a missile with criminal intent and kills or injures a person who is in another place commits the crime in the place where the injury is received (*j*).

(*d*) *R v County* (1816), 2 Russell on Crimes, 6th ed., 265, *Parkin's Case*, (1824), 1 Mood C C 40, *R v Rogers* (1868), L R 1 C O R 136, *Griffith v Taylor* (1876), 2 O P D 194, O A., at p. 202.

(*e*) *R v Simmonds* (1834), 1 Mood C C 408. If the nature of property stolen in one place is altered, and the property in its altered state is carried by the thief into another place, the thief is guilty of larceny in the second place as well as in the first, but the indictment if presented in the second place would be differently expressed from an indictment presented in the first place, *e.g.*, if a thief stole a live turkey in one place and carried it to another and killed it there, or stole a brass furnace in one place and carried it to another and broke it into pieces there, the indictment if presented in the first place would allege that he stole a "live turkey" or a "brass furnace," but if presented in the second place that he stole a "dead turkey" or "pieces of brass" (*R v Edwards* (1822), Russ & Ry 497, *R v Halloway* (1823), 1 O & P 127). So, if several jointly steal in the county of A and then divide the goods, and each afterwards carries his separate share into the county of B, they may be tried for a joint felony in the county of A, but not in the county of B, if tried in the county of B, they must be tried for separate felonies (*R v Barnett* (1818), 2 Russell on Crimes, 6th ed., 284).

(*f*) 4 Bl Com 229.

(*g*) *R v Thomson* (1795), 2 Russell on Crimes, 6th ed., 283, *Thomas's Case* (1794), 2 Leach, 634, *R v Fenley* (1903), 20 Cox, C C 252. Nor does the rule apply to a statutory larceny which is not a larceny at common law. If the original taking is only a statutory felony, the subsequent possession cannot be considered as larceny (*R v Millar* (1837), 7 O & P. 665). See as to Post Office offences, p. 644, *post*. The rule does not apply to false pretences (*R v Stanbury* (1862), L.R. & C. 128).

(*h*) *R v Martin* (1849), 1 Den. 398. See, further, as to the venue in cases of receiving, Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 96, and p. 288, *post*.

(*i*) *Fulwood's Case* (1837), Cro. Car 488, *R v. Gordon* (1804), 3 Russell on Crimes, 6th ed., 265.

(*j*) *R v Coombes* (1786), 1 Leach, 388; and see *R v Ryers* (1877), 3 Q. B. D.



The offence of high treason is committed in every county in which an overt treasonable act is done, and if several such acts are done in different counties, the venue may be laid in any one of these counties, and evidence at such trial may be given of overt acts in other counties (*k*)

SECT. 4.  
Venue  
Treason

Conspiracy may be tried in the place where the conspirators agreed to do the wrongful act which is the object of the conspiracy, but as the place of agreement is often unknown, conspiracy is generally a matter of inference deduced from criminal acts of the accused persons which are done in pursuance of a common criminal purpose, and are often not confined to one place, a charge of conspiracy may consequently be laid in any county where one of these criminal acts is committed, although no act may have been done by some of the accused in that county, yet if all the accused had a common criminal purpose and jointly co-operated in forwarding it in different counties, the venue may be laid in any county in which overt acts are done by some one of them in prosecution of the conspiracy (*l*)

Conspiracy.

A person who procures the commission of an offence commits the offence in the place where the act is done the commission of which he has procured, although he himself never was in that place (*m*).

Procuring.

If a person incites another to commit an offence, but the offence is not actually committed, the person who incites is guilty of a crime, which is triable, it seems, where the incitement took place (*n*)

Inciting.

#### SUB-SECT 2—Statutory Provisions

**585** Where the common law rule as to venue is relaxed, and provision is made by statute that a crime may be tried in some county or place other than that in which it was committed, the venue to be laid in the margin of the indictment is the area of jurisdiction of the court in which the indictment is found (*a*).

Statutory  
alteration  
of common  
law rule.

28, C O R, *per* FIELD, J, at p 34 Cases of this kind are in most instances provided for by statute (see Criminal Law Act, 1826 (7 Geo 4, c 64), s 12, and p 285, *post*) If the shot was fired or the missile thrown but no one was hit, the offence of attempting to do the injury would be committed, it is submitted, in the place where the person was who fired the shot or threw the missile

(*k*) *Vane's (Sir Henry) Case* (1662), Kel 14, 15, *Graham's (Sir Richard) Case* (1691), 12 State Tr 648, at pp 726, 740

(*l*) *R v Brisac* (1803), 4 East, 164, *per* GROSE, J, at p. 171, *R v Bowen* (1787), cited 4 East, at p 171 And *semble*, if a British subject, being abroad, conspires with someone in England to commit a crime in England, the British subject is triable in England, if his fellow-conspirator does any overt act in England in pursuance of the conspiracy (see *R v Jameson*, [1896] 2 Q. B 425, at p. 431, Greaves, Criminal Law Consolidation Acts, 2nd ed., p 37)

(*m*) *R v. Johnson* (1806), 7 East, 65, *R v Brisac* (1803), 4 East, 164, *R v Bull* (1845), 1 Cox, C O 281, but, as to accessories, see now ACCESSORIES AND ABETTORS Act, 1861 (24 & 25 Vict c. 94), s 7, and p. 285, *post*).

(*n*) *R v Higgins* (1801), 2 East, 5, *R v. Gregory* (1867), L R 1 O C R 77.

The rules as to venue are much less strict in the case of misdemeanours than in the case of felonies (*R v Burdett* (1820), 4 B. & Ald 95, *per* ABBOTT, C.J., at p 171, *R v Ellis*, [1899] 1 Q. B 230, C. O. R., *per* BAUGH, J, at p 242).

(*a*) See *R v. Mitchell* (1842), 2 Q. B 636; but see Counties of Cities Act, 1798 (38 Geo. 3, c. 52), s 3, and p. 286, *post*.

**SECT. 4**  
**Venue**

For the trial of some crimes the venue may be laid in any county in England (b)

In the case of certain other crimes the venue may be laid either in the county in which they are committed, if they are committed in England, or in the county or place in which the accused person is apprehended, or in custody (c), or in which such person is (d).

(b) Namely, the offence of violently assaulting or resisting officers of excise, if the offence is committed in England (Excise Management Act, 1827 (7 & 8 Geo. 4, c 53), s 43), offences against the Customs Acts, if committed in England, and if the indictment is preferred under the direction of the Commissioners of Customs (Customs Consolidation Act, 1878 (39 & 40 Vict c 36), s 258), offences against the Incitement to Mutiny Act, 1797 (37 Geo 3, c 70) (see s. 2), offences punishable as perjury under the Foreign Marriage Act, 1892 (55 & 56 Vict c 23) (see s 15), burning the King's ships etc either in the United Kingdom or in any British possession (Dockyards etc Protection Act, 1772 (12 Geo 3, c 24)) An offence against the Unlawful Oaths Act, 1797 (37 Geo 3, c 121) (see s 6), or the Unlawful Oaths Act, 1812 (52 Geo 3, c 104) (see s 7), whether committed on the high seas or out of England, may be tried before any court of oyer and terminer or gaol delivery in any county of England, as if the offence had been therein committed

(c) Namely, bigamy (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 57, *R. v Smith* (1858), 1 F & F 36, *R v Whitey* (1840), 1 Car & Kir 150, O O R) Offences against the Post Office Act, 1908 (8 Edw 7, c 48), s 72, see title **POST OFFICE** Embezzlement of public money by any person employed in the public service or in the police (Larceny Act, 1861 (24 & 25 Vict c 96), s 70) Offences against the Forgery Act, 1861 (24 & 25 Vict c 98), or the offences of offering, uttering, disposing of, or altering any matter with knowledge that it is forged or altered, or being an accessory to such an offence (*ibid*, s 41), *R v James* (1836), 7 U & P 553, *R v Smythies* (1849), 1 Den 498) Murder or manslaughter by a British subject of any person on land out of the United Kingdom or being accessory to such murder or manslaughter (Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 9) Offences committed on the high seas and other places within the jurisdiction of the Admiralty (Admiralty Offences Act, 1844 (7 & 8 Vict c 2), ss 1 & 2, see Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 687, and as to the Central Criminal Court, see Central Criminal Court Act, 1834 (1 & 5 Will 4 c 36), s 22, Admiralty Offences Act, 1844 (7 & 8 Vict. c 2), s 1, and Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict c 64), s 2(2)) All indictable offences mentioned in the Larceny Act, 1861 (24 & 25 Vict. c 96), in the Malicious Injuries to Property Act, 1861 (24 & 25 Vict c 97), in the Forgery Act, 1861 (24 & 25 Vict c 98), in the Coinage Offences Act, 1861 (24 & 25 Vict c 99), and in the Offences against the Person Act, 1861 (24 & 25 Vict. c 100), if such offences are committed within the jurisdiction of the Admiralty (see Larceny Act, 1861 (24 & 25 Vict c 96), s 115, Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 72, Forgery Act, 1861 (24 & 25 Vict c 98), s 50, Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 36, Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 68) Offences committed out of the King's dominions by a master etc of a British ship or by a person who within three months previously has been employed in such a capacity (see Merchant Shipping Act, 1894 (57 & 58 Vict. c 60), s. 687) Offences committed out of the United Kingdom against the Explosive Substances Act, 1883 (46 Vict. c. 3), s. 7) Offences against the Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s 9, whether committed within or without the King's dominions If a person who has been sentenced to penal servitude commits the offence of being at large before the expiration of his sentence, he is triable either in the county or place in which he is apprehended or in which he was sentenced (Transportation Act, 1824 (5 Geo 4, c 84), s 22; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s 3) An offence under the Pentonville Prison Act, 1842 (5 & 6 Vict c 29), is triable before justices of oyer and terminer either at the Central Criminal Court or in the county in

(d) For note (d) see p 285.

**586.** The venue of an offence committed on the boundary or boundaries of two or more counties or within the distance of 500 yards of any such boundary, or begun in one county and completed in another, may be laid in any of these counties in the same manner as if it had been actually and wholly committed there (c)

SECT. 4.

Venue.

Crimes committed on boundaries of counties.

which the offender is taken (s 28) An accessory either before or after the fact to a felony wholly committed in England may be tried by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the act by which the person becomes an accessory is committed, in every other case the accessory may be tried by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the accessory is apprehended or in custody, whether the principal felony has been committed on the sea or on the land, or begun on the sea and completed on the land, or begun on the land and completed on the sea, and whether within or without the King's dominions, or partly within and partly without the King's dominions (Accessories and Abettors Act, 1861 (24 & 25 Vict. c 94), s 7, see *R v Wallace* (1941), Car & M 200) If a person within the jurisdiction of the Admiralty becomes accessory to any felony, "the venue shall be the same as if the offence had been committed in the county or place in which he is indicted" (Accessories and Abettors Act, 1861 (24 & 25 Vict. c 94), s 9) If a statute authorises the trial of a crime in a county where the accused is in custody, and he is committed to take his trial in any particular county, but is allowed out on bail, he may be tried in that county, though he is not in confinement, till he surrenders in discharge of his bail (*R v Smythies* (1849), 1 Den 498)

(d) An offence in connection with the slave trade may be tried either where the offence was committed or in Middlesex, or in any place in which the person guilty of the offence may for the time being be, where any such offence is commenced at one place and completed at another, the offence may be tried at either place If a person being in one place is accessory to or aids and abets any such offence committed in another place, he may be tried either where the offence was actually committed or where the offender was at the time of his being accessory, aiding or abetting (Slave Trade Act, 1873 (36 & 37 Vict. c 88), s 28) Any offence under the Merchant Shipping Act, 1894 (57 & 38 Vict. c 60), for the purpose of giving jurisdiction is deemed to have been committed either in the place in which it was actually committed or in any place in which the offender may be (s 684), these provisions apply to a prosecution under the Behring Sea Award Act, 1894 (57 Vict. c 2), s 1 (2), (5), and Sched II Similar provisions are to be found in the Foreign Enlistment Act, 1870 (33 & 34 Vict. c 90), ss 16, 17 It is stated in some authorities that an indictment for extortion may be laid in any county under 31 Eliz c 5, s 4 (see 2 Starkie, Criminal Pleading, 2nd ed., 611, n. but there was a doubt whether s 4 applied to indictments (2 Chitty, Criminal Law, 293, n.), ss 2, 3, 4, and 6 of the statute were repealed as to civil proceedings by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), but remain in force as to criminal pleadings The proper course, it seems, would be to lay the indictment for extortion in the county where any act of extortion was committed If a person commits an offence against the Customs Acts in any place on the water not being within any county of the United Kingdom, or if the revenue officers have any doubt whether such place is within the boundaries of any such county, he is triable in the place in which the offence was actually committed or where the offender may be or be brought (Customs Consolidation Act, 1876 (39 & 40 Vict. c 36), s 229) An offence committed by a British subject on a British ship on the high seas, or in any foreign port or harbour or on board any foreign ship to which he does not belong, or an offence committed by an alien on board any British ship on the high seas, may be tried before any court of justice in the King's dominions, if the offender is found within the jurisdiction of the court, and if the court would have had cognisance of the offence, had it been committed within the limits of its ordinary jurisdiction (Merchant Shipping Act, 1894 (57 & 58 Vict. c 60), s 686, see *R. v. Lopez* (1858), Dears. & B 525).

(e) Criminal Law Act, 1826 (7 Geo 4, c 64), s. 12. One effect of the Act is to give adjoining counties concurrent jurisdiction over an area of 1000 yards through the centre of which runs the boundary. The Act applies to all offences

## SECT. 4

## Venue

Counties of  
cities

**587** An indictment for an offence committed within the county of a city or town corporate, except in London, Westminster, or the borough of Southwark, may be preferred to the grand jury of the next adjoining county at the sessions of oyer and terminer or gaol delivery and may be tried there (*f*) If an indictment for such an offence has been found by the grand jury of the county of a city or town, any court of oyer and terminer holden for such county of a

even to those, *e.g.*, burglary, which are local in their character (*R v Ruck* (1829), 2 Russell on Crimes, 6th ed., 46) The offence may be laid and tried in either county, but where it is laid, there it must be tried, it cannot be laid in one county and tried in another (*R v Mitchell* (1842), 2 Q B 636) The distance of 500 yards is to be measured geometrically from the place where the offence is committed to the nearest point of the boundary, and not along the road (*R v Wood* (1841), 5 Jur 225), the distance, it seems, is to be measured on a map without regard to the curvature or inequalities of the surface of the earth (see *Mouflet v Cole* (1872), 42 J. J (Ex) 8, Ex Ch., and compare Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 231, Interpretation Act, 1889 (52 & 53 Vict. c 63), s 34) The Act does not apply to trials in limited jurisdictions (*e.g.* in boroughs which are not counties of themselves), but only to counties, thus, an offence committed within 500 yards of the boundary of a borough which is not a county of itself cannot be tried at the quarter sessions for the borough (*R v Welsh* (1827), 1 Mood C C 175) The words "begun in one county and completed in another" do not make it necessary that there should be active and continuing agency in the person who commits the offence, thus, where a blow was struck in the county of Worcester, and the person struck died in the city of Worcester, which is a county of itself, it was held that the offender could be tried for manslaughter in the city (*R v Jones* (1830), 1 Russell on Crimes, 6th ed., 5) As regards detached parts of a county which are surrounded in whole or in part by another county, the Counties (Detached Parts) Act 1839 (2 & 3 Vict c 82), s 1, gives the justices of the county which surrounds the detached part jurisdiction to act over that part, and the effect is that a crime committed in such a detached part may be tried in the county which surrounds it or in the county to which the detached part belongs (*R v Loader* (1840), 1 Russell on Crimes, 6th ed., 7, note (w), Dickinson's Quarter Sessions, 6th ed., 209) As to the transference of outlying parts of a county to another county, see County Police Act, 1840 (3 & 4 Vict c 88), s 2, as explained by 21 & 22 Vict c 68, s. 2 (repealed by Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19))

(*f*) Counties of Cities Act, 1798 (38 Geo 3, c 52), ss 2, 10, Municipal Corporations Act, 1882 (45 & 46 Vict. c 50), s 188, Sched. VI The venue in cases tried under the Counties of Cities Act, 1798 (38 Geo 3, c. 52), is to be deemed to be the county of the city or town, and this may be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or may be stated in the body of the indictment (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 23, this enactment provides for the difficulty that arose from the conflicting decisions of *R v Mellor* (1808), Russ & Ry 144, and *R v Goff* (1810), Russ & Ry 179) A county of a city or town is a city or town which has been constituted a county of itself, and is not comprised in any other county, and is governed by its own sheriffs and other magistrates so that no officer of the county at large has power to intermeddle therein (1 Bl Com 119, *The Gloucester Case* (1593), Poph 16, *R v Gough* (1781), 2 Doug (x n.) 791) The following are the counties of cities—Bristol, Canterbury, Chester, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, York, Kingston-upon-Hull, and Newcastle-upon-Tyne The following are the counties of towns—Berwick-upon-Tweed, Carmarthen, Haverfordwest, Nottingham, Poole, and Southampton (see stat. 5 & 6 Will. 4, c 76), ss. 61, 109, and 5 & 6 Vict c 110, s. 1). Separate commissions of assize are issued and executed for the counties of the cities or towns of Newcastle-upon-Tyne, Exeter, Bristol, Norwich, Gloucester, Lincoln, Nottingham, Worcester, York, Haverfordwest, and Carmarthen, and the borough of Leicester (Archbold's Criminal Pleading, 23rd ed., p. 46). If for five years next before the passing of the Criminal Justice Administration

city or town may order the indictment to be tried by a jury of the next adjoining county (g)

SECT. 4.  
Venue.

**588** If a person tenders, utters, or puts off any counterfeit coin in any county or jurisdiction, and also tenders, utters, or puts off any other counterfeit coin in any other county or jurisdiction on the same day or within ten days next ensuing, or if two or more persons act in concert in different counties or jurisdictions to commit any offence against the Coinage Offences Act, 1861 (*h*), the venue may be laid in any one of those counties or jurisdictions (*i*).

Uttering  
counterfeit  
coin in  
two counties.

**589** The venue of an offence committed on any person, or in respect of any property, in or upon any coach, waggon, cart, or other carriage employed on any journey or on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, may be laid in any county through any part whereof such coach, waggon, cart, carriage, or vessel passes in the course of the journey or voyage during which the offence is committed, in the same manner as if it had been actually committed in such county (*k*).

Crimes  
committed  
on journeys.

Act, 1851, a commission of oyer and terminer was not directed to be executed within any county of a city or county of a town then until such commission shall be directed to be executed there, indictments for offences committed therein may be preferred and tried in the adjoining county (Criminal Justice Administration Act, 1851 (14 & 15 Vict c 55), s 19, Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 188) For this purpose the next adjoining county to Berwick-upon-Tweed and Newcastle-upon-Tyne is Northumberland, to Bristol, Gloucestershire, to Chester, Cheshire, to Exeter, Devonshire, to Kingston-upon-Hull, Yorkshire (Municipal Corporations Act, 1882, Sched VI) As to Bristol, see *R v Holden* (1838), 8 O & P 606. As to alteration of boundaries, see *R v Piller* (1836) 7 O & P 337, *R v Gloucestershire Justices* (1836), 4 Ad & El 689, Local Government Act, 1888 (1 & 62 Vict c 41), s 54

(g) Counties of Cities Act, 1798 (38 Geo 3, c 52), s 3

(h) 24 & 25 Vict c 99

(i) *Ibid*, s 28

(k) Criminal Law Act, 1826 (7 Geo 4, c 64), s 13 If the side, centre, or other part of any highway, or if the side, bank, centre, or other part of any such river, canal, or navigation, constitutes the boundary of any two counties, the offence is triable in either of the counties through or adjoining to or by the boundary of any part whereof the coach, waggon, cart, carriage or vessel passes in the course of the journey during which the offence is committed (*ibid*, compare the Fugitive Offenders Act, 1881 (44 & 45 Vict c 69), s 21) The Act applies to a journey by railway (*R v French* (1859), 8 Cox, C C 252), it is not confined to the carriages etc of common carriers or to public conveyances, but applies to all carriages etc (*R v Sharpe* (1854), Dears O C 416) Where an assault was committed in a railway carriage in the county of A, which is outside the jurisdiction of the Central Criminal Court, and the person assaulted afterwards left the carriage and journeyed in another carriage on the same train to a place in the county of B, which is within the jurisdiction of the Central Criminal Court, it was held that the offence was triable at the Central Criminal Court (*R v French* (1859), 8 Cox, C C 252) Where the guard of a coach who had been intrusted with a parcel containing banknotes and sovereigns, carried the parcel into an outhouse, while the coach was stopping at a place in the county of G, and there took the sovereigns out of the parcel and appropriated them, and the coach afterwards passed through the county of H, it was held that the act of stealing was not "in or upon the coach," that the statute did not apply,

## SECT 4

## Venue

Post Office  
offences

**590** Where an offence is committed in respect of a mail, mail-bag, postal packet, or money order, or any chattel, money, or valuable security sent by the post, the venue may be laid in any county or place in which the offender is apprehended or in custody, and also in any county or place through which or through any part whereof the mail, mailbag, postal packet, money order, chattel, money or security passed in due course of conveyance by post (l).

Stealing  
from wreck.

**591** The offence of plundering or stealing any part of any ship in distress or wrecked, stranded, or cast ashore, or any goods etc. belonging to such ship, may be tried either in the county or place in which the offence was committed or in any county or place next adjoining (m)

Receipt of  
stolen  
property

**592** The receiver of a chattel etc knowing that it has been feloniously or unlawfully stolen or obtained by false pretences, whether he is charged as an accessory after the fact or with a substantive felony or with a misdemeanour only, may be indicted in the county or place in which he may have had the property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanour may be indicted, in the same manner as in the county where the receiver actually received the property (n)

**593** A person having in his possession in any part of the United Kingdom any property which he has stolen or otherwise feloniously taken in any other part of the United Kingdom may be indicted for larceny in that part of the United Kingdom in which he has such property as well as in the part where he stole it. If a person in any part of the United Kingdom receives or has any property which has been stolen or otherwise feloniously taken in any other part of the United Kingdom with knowledge that it was stolen etc., he may be indicted for the offence of receiving in that part of the United Kingdom in which he receives or has such property, in the same manner as if it had been originally taken or stolen in that part, or the venue may be laid in the part where the principal thief may be tried (o)

**594** The venue of the offence (p) of unlawfully receiving or having possession of any property stolen out of the United Kingdom

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that the guard could not be tried in H, and that the proper venue was the county of G (*Sharpe's Case* (1836), 2 Lew C O 233, *sed quare*, see *R v. Pierce* (1852), 6 Cox, C O 117)

(l) Post Office Act, 1908 (8 Edw 7, c. 48), s 72 (1) When the offence is committed on any highway, harbour, canal, river, arm of the sea, or other water, constituting the boundary of two or more counties or places, it may be tried in any of the said counties or places (Post Office Act, 1908 (8 Edw. 7, c. 48), s. 72 (2)). The offence of being accessory to or of aiding or abetting an offence against the Act may be tried in any county or place in which the last mentioned offence may be tried, *ibid*, s 72 (3)

(m) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 64.

(n) *Ibid.*, s 93.

(o) *Ibid.*, ss 96 and 114.

(p) This offence was created by the Larceny Act, 1896 (59 & 60 Vict. 32)

with knowledge that it was stolen may be laid in any county or place in which the accused has or has had the property (g).

SECT. 4.  
Venue.

**595** If a person is feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, and dies of such stroke etc in England or Ireland, or, being feloniously stricken etc. in England or Ireland, dies of the same at sea or at any place out of England or Ireland, the offender, whether principal or accessory, may be indicted in the county or place in England or Ireland in which the death, stroke, poisoning, or hurt happened (s).

Death in one place caused by criminal act in another place.

**596.** Indictments for high treason or misprision of treason committed out of England, and for oppressions committed out of England by colonial governors, are triable in the King's Bench Division of the High Court of Justice or by special commission in such county as the King may appoint (s)

Offences triable in King's Bench Division.

Offences by the Governor-General of India and other persons in certain offices in India, and by persons in the public service in other possessions of the Crown outside the United Kingdom, may be tried in the King's Bench Division of the High Court of Justice (t)

An offence under the Official Secrets Act, 1889 (a), if alleged to have been committed out of the United Kingdom, is triable in the King's Bench Division of the High Court of Justice or at the Central Criminal Court (b).

The offence of wilfully neglecting or delaying to deliver or transmit writs for the election of members of Parliament is apparently only triable in the King's Bench Division of the High Court of Justice (c).

**597** If a person who is subject to the Mutiny Act for the time being in force is committed to take his trial for any murder or

Trial of soldiers for murder etc. at Central Criminal Court.

(g) Larceny Act, 1861 (24 & 25 Vict c 96), s 1 (1)

(s) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 10 See *R v Coombes* (1785), 1 Leach, 388 This provision does not apply to a foreigner who causes the death of another person by an act done outside the jurisdiction of the King, *R v Lewis* (1857), Dears & B 182, *R v Jameson*, [1896] 2 Q. B. 425, per Lord Russell of KILLOWEN, O J, at p 430

(t) Stat (1543) 35 Hen 8, c 2, s 1, stat (1551) 5 & 6 Edw 6, c 11, s 4 (see p 276, ante), stat (1698) 11 Will 3, c 12 As to treasons committed at sea within the Admiralty jurisdiction, see p 274, ante, Offences at Sea Act, 1546 (28 Hen 8, c 15) For a modern instance of a trial in the High Court for treasons committed abroad, see *R v. Lynch*, [1903] 1 K B 444

(a) East India Company Act, 1772 (13 Geo 3, c 63), s 39, Criminal Jurisdiction Act, 1802 (42 Geo 3, c 85), s 1 These Acts relate to prosecutions for criminal, oppressive and fraudulent acts committed by persons in public employment abroad in the exercise of their employments, but do not extend to felonies (*R v. Shaws* (1816), 5 M & S 403) For instances of prosecutions under these statutes, see *R v Picton* (1812), 30 State Tr 225, *R v Jones* (1806), 8 East, 31; *R v Eyre* (1868), L R 3 Q B 487, *R v. Eyre* (1868), reported by W. F. Finlason, 33, *R v. Turner* (1869), 24 L. J 466, 469, 479, 493

(b) 52 & 53 Vict. c. 52.

(c) *Ibid.*, s. 6.

(e) Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), s. 6 and title ELECTIONS.



**SECT. 4**  
**Venue**

manslaughter of a person also subject to that Act committed at any place in England and out of the jurisdiction of the Central Criminal Court, the King's Bench Division may, upon the application of the Secretary of State for War, order that the prisoner should be indicted and tried at the Central Criminal Court, and thereupon he may be tried there, as if the murder or manslaughter had been committed within the jurisdiction of the Central Criminal Court (*d*).

Perjury before a naval court-martial, wherever committed, is triable in England (*e*).

**Indictment**  
**tried where**  
**venue laid**

**Change of**  
**venue.**

**598** If the venue for the trial of a crime is laid in a particular county or place, the indictment must in general be tried there, the venue cannot be laid in one county or place and tried in another (*f*). But the King's Bench Division of the High Court of Justice has power to change the venue and to order the trial to take place in any county or jurisdiction in the realm (*g*)

## Part III.—Proceedings Preliminary to Indictment.

### SECT 1 —*Securing Attendance of Accused Person.*

#### SUB-SECT 1 —*Summonses and Warrants*

**Commence-**  
**ment of**  
**criminal**  
**proceedings.**  
**Summonses**  
**and warrants**

**599** The first step in the ordinary course of criminal procedure is to bring a person charged with a crime before justices of the peace in order that the charge may be investigated

The attendance of an accused person before justices is secured either by summons or by arrest, either under or without a warrant (*h*) Summonses and warrants of arrest are issued by a justice on an information being laid before him. A warrant of

(*d*) Jurisdiction in Homicides Act, 1802 (25 & 26 Vict c 65), ss 1, 3

(*e*) Naval Discipline Act, 1866 (29 & 30 Vict c. 109), s 67 There is no provision as to the venue, if the perjury is committed out of England, naval courts-martial are under this Act held on board a man-of-war (see *ibid*, s 59), and perjury at a court so held is triable according to the rules relating to crimes committed within the Admiralty jurisdiction, see p 273, *ante*

(*f*) See *R v Mitchell* (1842), 2 Q B 636, and Counties of Cities Act, 1796 (38 Geo 3, c. 52), s 3

(*g*) See p 350, *post*

(*h*) For the procedure in reference to summonses and arrests with regard to an indictable offence, see the Indictable Offences Act, 1848 (11 & 12 Vict c. 42), ss 1, 2. Summonses, warrants, and arrests are mere machinery for securing the attendance of an accused person. The invalidity of any of these preliminary steps will not affect the jurisdiction of justices, if the accused person appears and the charge is one which the justices have power to investigate (*R v Hughes* (1870), 4 Q. B. D 614, O O R.).



arrest may issue on a summons being disobeyed, or may issue in the first instance

A summons is an order in writing, signed by a justice and directed to an accused person requiring him to attend before a justice or justices to answer a criminal charge (i)

A warrant of arrest is an order, also in writing under the hand and seal of a justice or other person in authority, addressed to a police constable by name, or by the name of his office, and to all other peace officers in a certain area, commanding him or them to arrest an accused person and bring him before the justices sitting in a specified place, to answer the charge which is referred to in the warrant (k)

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**600.** Summonses or warrants may be issued by a justice of the peace for any county, city, borough or place in England or Wales, when an information has been laid before such justice that any

Jurisdiction  
of justices  
to issue  
summonses  
etc.

(i) As to the form, see Indictable Offences Act, 1848 (11 & 12 Vict c 42), Schedule, Form C. It is served by a constable or other peace officer upon the party to whom it is directed by delivering it to such party personally, or if he cannot conveniently be met with, then by leaving it with some person for him at his last or most usual place of abode (*ibid*, s 9)

(k) As to the form of a warrant in the case of an indictable offence, see Indictable Offences Act, 1848 (11 & 12 Vict c 42), Schedule, Form B. Warrants, besides being issued by justices, may be granted in the case of treason by a Secretary of State (*R v Kendal* (1695), 1 Ld Raym 65, *R v Darnard* (1798), 7 Term Rep 736, see *Leach v Money* (1765), 19 State Tr 1001). Any judge of the King's Bench Division of the High Court of Justice may issue a warrant for the arrest of a person against whom a charge is made on oath of felony (1 Chitty, Criminal Law, 36, and see Bail Bonds Act, 1808 (48 Geo 3, c 58), s 1). Under s 380 of the Merchant Shipping Act, 1894 (57 & 58 Vict c 60), a warrant may be issued by a superintendent (*i.e.*, a shipping master or other officer of a local marine board, see *ibid*, ss 246 and 742) or by the principal Board of Trade officer at a port or district or by his deputy, on the information made, if the officer so require, on oath, for the apprehension of any seaman or apprentice charged with the offence of desertion, absence without leave, wilful disobedience, continued breach of duty, or unlawful combination. A warrant must in general direct the arrest of a particular person by name, or by description, if his name is unknown. But a justice of the peace may, at common law, issue a search warrant authorising a search in any house etc. for stolen goods and the arrest of any person found in possession of such goods (see p 309, *post*). In other cases a general warrant (*e.g.*, a warrant to seize the "authors, printers and publishers" of a certain specified libel) is bad at common law (*Leach v Money* (1765), 19 State Tr 1001 at p 1027, *Entick v Carrington* (1766), 19 State Tr 1029, 1074). Exceptional powers are given by statute authorising the arrest of an indefinite number of persons found in gaming houses (see Unlawful Games Act, 1542 (33 Hen. 8, c 9), s 9, Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 48, Gaming Act, 1845 (8 & 9 Vict c 109), s 6, Betting Act, 1853 (16 & 17 Vict c 119), s 11 see *Murphy v Arrow*, [1897] 2 Q. B. 527), in unlicensed theatres and other places of public entertainment (Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2, Metropolitan Police Act, 1839 (2 & 3 Vict. c 47), s 46), in places used for cockfighting etc. (Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s. 47). Justices are also authorised by a number of statutes to issue search warrants in addition to those which they may issue at common law (see p 310, *post*). A warrant of commitment (*i.e.*, a justices' order committing an accused person to prison to take his trial for an indictable offence) is made out, when the preliminary examination is concluded and the justices consider that a *prima facie* case has been established, see p. 322, *post*. As to bench warrants see p. 351, *post*.

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**Securing**  
**Attendance**  
**of Accused**  
**Person.**

person has committed, or is suspected to have committed, any indictable offence within the limits of the jurisdiction of such justice, or that any person guilty or suspected of having committed any such crime outside such jurisdiction is residing or being, or suspected to reside or be, within such jurisdiction (*l*).

**Information**

**601** A warrant cannot issue unless there is an information in writing and on oath. A summons may be issued on an oral and unsworn information (*m*).

**Informer.**

Generally speaking, any person may be the informer and may make the charge before the justice, except where there is statutory provision limiting the power of making the charge to certain persons, or making the consent or order of some person a condition precedent to the institution of the proceedings (*n*).

**Attorney-General**

**602** It is the duty of the Attorney-General to institute prosecutions for crimes which have a tendency to disturb the peace of the State or to endanger the Government, and no information at the suit of anyone but the Attorney-General will be granted by the King's Bench Division of the High Court of Justice for such an offence (*o*).

**Director of**  
**Public**  
**Prosecutions**

**603** It is the duty of the Director of Public Prosecutions, under the superintendence of the Attorney-General, to institute, undertake or carry on such criminal proceedings, and to give such advice and assistance to chief officers of police, clerks to justices and other persons, whether officers or not, concerned in any criminal proceeding, respecting the conduct of that proceeding, as may be for the time being prescribed by regulations under the Prosecution of Offences Act, 1879 (*p*), or may be directed in a special case by the Attorney-General. The regulations under that Act provide for the Director of Public Prosecutions taking action in cases of importance or difficulty, or in which special circumstances or the refusal or failure of a person to proceed with a prosecution appear to render the action of such Director necessary to secure the due prosecution of an offender (*q*).

(*l*) Indictable Offences Act, 1848 (11 & 12 Vict c 42) s 1. As to a warrant to apprehend a person for offences committed on the high seas or abroad, see *ibid*, s 2, and Schedule, Form E, and *R v Eyre* (1868), L R 3 Q B 487. As to a warrant when an indictment has been found against a person not in custody, see *ibid*, s 3, and Sched G. As to the procedure when the offence for which a person is brought before a justice was committed outside his jurisdiction, see *ibid*, s 22.

(*m*) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 8, see *O'Brien v. Brabner* (1885), 49 J P 227.

(*n*) *R v Kennedy* (1902), 86 L T 753, *R v Granatelli* (1849), 7 State Tr. (N. S.) 979. See p 293, *post*.

(*o*) *R v Langley, Ex parte Crawshaw* (1860), 8 Cox, C C 354.

(*p*) 43 & 43 Vict c 22.

(*q*) *Ibid*, s 2, see also Prosecution of Offences Act, 1884 (47 & 48 Vict c 88), and Prosecution of Offences Act, 1906 (8 Edw 7, c 3). Regulations under the Acts of 1879 and 1884 were made 25th January, 1886 (see Douglas, *Summary Procedure*, 8th ed., p. 485).

**604.** There are some statutes which require that certain criminal proceedings should be undertaken by particular persons, or only with the consent of particular persons, but in the absence of statutory provisions to the contrary any person may of his own initiative, and without any preliminary consent, institute criminal proceedings with a view to an indictment (r)

**605.** If application is made to a justice to issue a summons or a warrant of arrest, he must exercise a judicial discretion in deciding to grant or refuse it. If he declines jurisdiction, or refuses to grant a summons for a reason which is bad in law, a rule may be granted by the King's Bench Division of the High Court of Justice

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Right of any person to initiate criminal proceedings  
Discretion of justices as to summonses etc.

(r) In many statutes relating to proceedings before a court of summary jurisdiction there are provisions defining what person should be the informant (see, e.g., Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 42, and *Nicholson v. Booth* (1888), 57 L J (M C) 43, *Pickering v. Willoughby*, [1907] 2 K B 296, *Tarry v. Newman* (1846), 15 M & W 645, *Smith v. Dear* (1903), 20 Cox, C C 458). In a few cases of indictable offences the power of instituting proceedings is limited to certain persons or made subject to the consent of certain persons. For instance, all indictments for any offences under the Customs Acts must be preferred in the name of the Attorney General or of some officer of Customs or Inland Revenue (Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 255. The consent of the Attorney General is required for a prosecution under the Official Secrets Act, 1889 (52 & 53 Vict c 52) (see *ibid.*, s. 7 (1)), the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict c 69) (see *ibid.*, s. 4), the Prevention of Corruption Act, 1906 (6 Edw. 7, c 34) (see *ibid.*, s. 2 (1)), the Law of Property Amendment Act, 1859 (22 & 23 Vict c 35) (see *ibid.*, s. 24), the Larceny Act, 1861 (24 & 25 Vict c 96), s 80, the Public Health Act, 1875 (38 & 39 Vict c 55), s 69, the Punishment of Incest Act, 1908 (8 Edw. 7, c 45), unless it is commenced by or on behalf of the Director of Public Prosecutions (see *ibid.*, s. 6). Where an election court or election commissioners have reported that persons have been guilty of any corrupt practice, it rests with the Attorney-General to decide whether he should or should not institute or direct a prosecution, but it seems that there is nothing to prevent a private person from instituting a prosecution if he wishes (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict c. 51), s. 60), as to prosecutions by the Director of Public Prosecutions for corrupt or illegal practices, see *ibid.*, ss. 45, 57, and as to prosecutions by the returning officer at an election for personation, see Ballot Act, 1872 (35 & 36 Vict c 33), s. 24, and Parliamentary Voters Registration Act, 1843 (6 & 7 Vict c 18), ss. 86, 87. See title ELECTIONS. If any person is charged before a justice with any crime under the Explosive Substances Act, 1883 (46 Vict c 3), no further proceeding is to be taken against such person without the consent of the Attorney-General, except for the purpose of securing the safe custody of such person by remand or otherwise (*ibid.*, s. 7). See title EXPLOSIVE. A prosecution under the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict c 73), s. 2, of a person who is not a subject of the King cannot be instituted in England except with the consent of a Secretary of State (*ibid.*, s. 3). No criminal prosecution for libel can be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published in such newspaper without the order of a judge in chambers being first obtained (Law of Libel Amendment Act, 1888 (51 & 52 Vict c 64), s. 8, and see title LIBEL AND SLANDER). A prosecution of a bankrupt for an offence under the Debtors Act, 1869 (32 & 33 Vict c. 62), or under the Bankruptcy Act, 1883 (46 & 47 Vict. c 52), may be ordered by a court exercising bankruptcy jurisdiction, and in such a case the Director of Public Prosecutions is to institute and carry on the prosecution (Debtors Act, 1869 (32 & 33 Vict c 62), s. 16; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 168), but there is nothing which makes the order of such a court a condition precedent to the institution of proceedings or to prevent anyone from instituting them (*R v Thomas* (1869),

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to compel him to hear and determine the matter (s). If he exercises his discretion and does so properly, the court will not grant a mandamus to hear and determine the matter (a). If he refuses to grant a summons or warrant and assigns several reasons for doing so, and some of these reasons are bad in law, but others are good, the court will not grant a mandamus (b)

No limitation  
of crime in  
general for  
criminal  
proceedings

**606** Criminal prosecutions, except where there are statutory provisions to the contrary (c), may be commenced at any time after

11 Cox, O O 535), and a private person instituting such a prosecution without the order of a judge may now obtain an order for the payment of his costs (Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15) s 10, repealing s 17 of Debtors Act, 1869 (32 & 33 Vict c 62)) If the office of Attorney-General is vacant, the Solicitor-General has, it seems, the powers of the Attorney-General (*R v Wilkes* (1770), 4 Burr 2527, at p 2534) In cases of offences under s 26 of the Offences against the Person Act, 1861, and of inflicting bodily injury on a person under sixteen, if the justices before whom a complaint of the offences is heard certify that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the poor or overseers of the place where the offence is alleged to have been committed, the guardians, or, if there are no guardians, the overseers, must conduct the prosecution (*ibid*, s 73)

(s) *R v Byrde* (1890), 60 L J (M C) 17 As to mandamus, see title CROWN PRACIKL

(a) *R v Bros* (1901), 85 L T 581, *R v Kennedy* (1902), 86 L T 753

(b) *R v Kennedy*, *supra*

(c) Various periods of limitation after the offence is committed are provided by different statutes for the commencement of proceedings, e.g. (1) Three years in the case of treason (except the treason of designing, endeavouring or attempting any assassination on the body of the King by poison or otherwise), if it is committed in any part of the United Kingdom (Treason Act, 1695 (7 & 8 Will 3, c 3), s 5, Treason Act, 1708 (7 Ann c 21), Treason (Ireland) Act, 1821 (1 & 2 Geo 4, c 24), Fost 249, falsely pretending to be in holy orders and solemnising matrimony according to the rites of the Church of England (Marriage Act, 1823 (4 Geo 4, c 76), s 21), offences against the Customs Acts (Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 257, see *R v Thompson* (1851) 16 Q B 832), offences against the Births and Deaths Registration Act, 1874 (37 & 38 Vict c 88), s. 46, or against the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 15 (there is an alternative period of limitation of one year after the discovery of the offence by the prosecution, if that period expires before the expiration of three years from the commission of the offence (*ibid*)) (2) Two years in the case of all indictments under any penal statute whereby the forfeiture is limited to the King (stat 31 Eliz c 5, s 5), unless the statute prescribes a different period (3) Eighteen months in the case of a prosecution for perjury under the Marriage Act, 1840 (3 & 4 Vict c 72), from the solemnisation of the marriage for the procuring of which the false declaration punishable under that Act as perjury was made (*ibid*, s 4) (4) One year in the case of offences against the Riot Act, 1714 (1 Geo 1, stat. 2, c 5) (*ibid*, s 8), or the Shipping Offences Act, 1793 (33 Geo 3, c 67), s. 8, offences punishable upon indictment or otherwise than upon summary conviction under the Night Poaching Act, 1828 (9 Geo 4, c 69) (*ibid*, s 4), offences under the Corrupt Practices Prevention Acts, i.e., the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict c. 102), the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29), the Parliamentary Elections Act, 1868 (31 & 32 Vict c 125), the Ballot Act, 1872 (35 & 36 Vict. c 33), Part III., the Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c 75), the Representation of the People Act, 1867 (30 & 31 Vict. c 102), ss. 11, 49, 50, or the Corrupt and Illegal Practices Prevention Act, 1908 (46 & 47 Vict. c 51), if such an offence was committed in reference to an election with respect to which an inquiry is held by election commissioners, the period of limitation is one year after the offence

the commission of the offence (*d*) A prosecution is commenced, when an information is laid before a justice (*e*), or, if there is no information, when the accused is brought before a justice to answer the charge (*f*), or, if there is no preliminary examination before a justice, when an indictment is preferred (*g*).

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was committed or three months after the report of such commissioners, whichever period last expires, but must in any case not exceed two years after the offence was committed (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c 51), s 51) (*5*) Six months in the case of offences against the Unlawful Drilling Act, 1819 (60 Geo 3 & 1 Geo 4, c 1) (*ibid*, s 7), the offence of unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of a girl of or above the age of thirteen years and under the age of sixteen (Criminal Law Amendment Act 1885 (48 & 49 Vict. c 69), s. 5, Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 27, and see *R v West*, [1898] 1 Q B 174, O C R.) For any act done in pursuance or execution, or intended execution, of any Act of Parliament or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty or authority, the prosecution must be commenced within six months next after the act, neglect or default complained of, or in case of continuance of injury within six months after the ceasing of such injury (Public Authorities Protection Act, 1893 (56 & 57 Vict. c 61), s 1, see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS) (*6*) Three months in the case of blasphemy under 9 Will 3, c. 36 (information of the blasphemous words must be given within four days after the words spoken (*ibid*, s 2))

Proof of the issue of a warrant which is not executed within the time limited for commencing the prosecution is not proof that the prosecution is commenced in time, unless proof is also given of the information (*R v Phillips* (1818), Russ & Ry 369, *R v Parker* (1864), Ld & Ca 459, *R v Hull* (1860), 2 F & F 16) If an indictment is presented within the time limited and is ignored, *semble* the prosecution has been commenced in time, and another indictment found after the expiration of the limited time would be valid (*R v Killminster* (1835), 7 O & P 228). If a prosecution is commenced for one offence (*e g*, feloniously shooting) within the limited time, and after the expiration of the limited time an indictment is found for a different offence arising out of the same facts (*e g*, an offence under the Night Poaching Act, 1828 (9 Geo 4, c 69)), the prosecution is not commenced in time as regards the offence for which the indictment is found, unless the offence for which the indictment is found is one of which the accused person could have been found guilty, if he had been indicted for the other offence (*R v Casbolt* (1869), 11 Cox, O C 385), so, if a prosecution is commenced within the limited time for rape, and the indictment is found after the expiration of such time for an offence specified in s 9 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), the indictment is in time, because on an indictment for rape a person can be found guilty of any such offence (see Criminal Law Amendment Act, 1885 (48 & 49 Vict. c 69), s. 9) Where there is a time limited for the commencement of a prosecution, the day on which the offence was committed is to be excluded in the computation of the prescribed time (*Radcliffe v. Bartholomew*, [1892] 1 Q B 161, see *Pellow v. Wonford (Inhabitants)* (1829), 9 B & O 134, *Williams v Burgess* (1840), 12 Ad. & El 636) Sundays are to be included in the computation of time, unless the statute prescribing the time expressly excludes them (*R v Middlesex Justices* (1843), 2 Dowl (N s) 719) In every Act passed after 1850 "month" means calendar month, unless the Act expressly or by implication makes provision to the contrary (Interpretation Act, 1849 (52 & 53 Vict. c 63), s. 3)

(*d*) As regards offences punishable under the Summary Jurisdiction Acts, except where some other limitation of time is prescribed by statutes, the information must be laid within six calendar months from the time when the matter of the information arose (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11, see title MAGISTRATES).

(*e*) *R. v. Wallace* (1797), 1 East, P C. 186, O. C R.

(*f*) *R. v. Austin* (1845), 1 Car & Kir 621.

(*g*) *R. v. Killminster* (1835), 7 C & P 228.

## SECT 1

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## Arrest.

## SUB-SECT 2 — Arrest.

## (1) In General

**607.** Arrest consists of the actual seizure or touching of a person's body with a view to his detention (*h*) It may be made either with or without a warrant. An arrest without a warrant may be under a power conferred by common law or by statute, and may be by a private person, or by a peace officer on the direction of a private person, or by a peace officer on his own initiative

Anyone who assaults any person with intent to resist or prevent lawful apprehension is guilty of a misdemeanour (*i*)

An infant under seven cannot, it seems, be arrested (*k*)

## (2) Arrest without Warrant

By a private  
person

**608** At common law the power of a private person to arrest is limited to cases where treason or felony has been actually committed or attempted, or where there is immediate danger of treason or felony being committed, or where a breach of the peace has been actually committed or is apprehended (*l*)

Treason or  
felony

**609** If treason or felony has been actually committed, anyone except the King (*m*) may without a warrant arrest a person whom there is reasonable cause for suspecting of having committed the crime (*n*)

Anyone may without a warrant arrest a person whom he sees on the point of committing or attempting to commit treason or felony (*o*), but there is no power of arrest if the attempt has ceased (*p*)

(*h*) See *Genner v Sparks* (1704), 6 Mod Rep 173; *Sandon v Jervis* (1858), E B & E 933, Ex Oh, *Russen v Lucas* (1824), 1 C & P 153 The mere pronouncing of words of arrest without touching the body of the person it is sought to arrest is not an arrest, unless the person submits to the process and goes with the arresting officer If he does not submit, there can be no arrest, unless the officer lays hold of him (*Horner v. Batty* (1739), Buller's Nisi Prius, 61)

(*i*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 38.

(*k*) *March v Loader* (1863), 14 C B (N s) 535, see p 239, *ante*

(*l*) See 2 Hawk P C, c 12, 2 Hale, P. C. 78. Fost 318

(*m*) The King has no power to arrest or order the arrest of anyone (2 Co Inst. 186, 187, see *Case of Kimbelton (Lord)* and *the Five Members* (1641), 4 State Tr 83)

(*n*) Dalton's Country Justice, p 448, 2 Co. Inst. 52, 1 Hale, P C. 489, 2 Hale, P C 82, Fost 310, 318, 2 Hawk P C, c 12, s 1; *Allen v Wright* (1838), 8 C & P 522, *R v Price* (1838), 8 C & P 262 As to hue and cry, see 2 Co Inst. 172, 1 Hale, P C. 464, Fost. 309, 310, and p 300, *post*.

(*o*) 2 Hawk P. C, c 12, s 19, 2 Roll Abr tit. Trespass, Imprisonment, 559, B, *Handcock v Baker* (1800), 2 Bos. & P 260, *R v Hunt* (1825), 1 Mood. C. C 63; see *Allen v London and South Western Rail Co* (1870), L. R. 6 Q. B. 65

(*p*) See *Allen v. London and South Western Rail Co.*, *supra*. As to the authority of a servant to arrest in respect of an offence committed or suspected to have been committed against his master's property, see the cases last cited. In cases of injuries to property which are offences against the Malicious Damage Act, 1861 (24 & 25 Vict c. 97), there is now a statutory power of arrest

**610.** A private person may also without a warrant arrest any one who in his presence commits a breach of the peace, when the breach is still continuing, or, if it is not still continuing, when there is reasonable ground for apprehending a renewal of the breach, or when the offender escapes immediately after committing the breach and is taken on fresh pursuit, which commenced immediately and is continued without a break (*q*)

A private person may also, it seems, arrest without a warrant any one who there is reasonable ground for supposing is about to commit a breach of the peace in the presence of such private person (*r*).

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without a warrant (see s 61, *ibid*, and p 301, *post*, see, too, Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 66, and p 301, *post*)

(*q*) *Price v Seeley* (1843), 10 Cl & Fin 28 H L., following *Timothy v Simpson* (1835), 1 Cr M & B 757, *R v Light* (1857), 27 L J (M C) 1, C C R, 2 Hawk. P C, c 12, s 1. As to persons acting under the command of a justice of the peace in suppressing a riot or in aid of the police, see p 299, *post*. A breach of the peace is committed, when there is an actual assault (see *Osborn v Vetch* (1858), 1 F & F 317, *Coward v Baddeley* (1859), 4 H & N 478, and p 605, *post*), or when public alarm and excitement are caused by a person's wrongful act. Mere annoyance and disturbance or insult to a person or abusive language or great heat and fury without personal violence do not constitute a breach of the peace (*Wheeler v Whiting* (1810), 9 O & P 262). A stranger who commits a disturbance in another person's house may be turned out of the house by the householder or by a constable whom he calls to his assistance, but cannot be given in charge (*ibid*). The persistent ringing of another person's door bell does not of itself constitute a breach of the peace (*Grant v Moser* (1843), 5 Man & G 123, but see now Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 54 (16), Town Police Clauses Act, 1847 (10 & 11 Vict c 89), s 28). A person who is present at a public meeting and disturbs the meeting by derisive cries and by putting questions and making observations does not commit a breach of the peace, although such conduct might justify the turning the disturber out of the place where the meeting was held (*Wooding v Orley* (1839), 9 O & P 1), or might be ground for a prosecution under the Public Meeting Act, 1908 (8 Edw 7, c 66), s. 1. If a person who conducts himself in a disorderly manner in a house, and refuses to leave when requested, resists and lays hands on the householder who attempts to turn him out, the person so resisting commits a breach of the peace for which he may be arrested by the householder without a warrant (*Howell v Jackson* (1834), 6 C & P 723), but, except where there is a breach of the peace, there is no power at common law to arrest without a warrant for a mere disturbance (*Green v Bartram* (1830), 4 C & P 308, *Rose v Wilson* (1823), 1 Bing 353, *Reece v. Taylor* (1835), 4 Nev & M. (K B) 469). If a person by abusive language or disorderly conduct in or near to a house causes a crowd to assemble and refuses to desist, such conduct by him amounts to a breach of the peace, and justifies an arrest without a warrant by anyone present, "such acts tend to excite the passions of the crowd and to endanger the person or house of the person so abused" or annoyed (*Ingle v Bell* (1836), 1 M. & W 516, *Cohen v Huskisson* (1837), 2 M. & W 477). To create a disturbance and molest and obstruct a public officer (e.g., a returning officer) in the execution of his duty is a breach of the peace (*Spilsbury v Michlethwaite* (1808), 1 Taunt 146, per Lord Mansfield, C J., at p 151). As to resistance to a sheriff, see Sheriff's Act, 1887 (50 & 51 Vict. c 55), s. 8 (2), and note (*f*), p 303, *post*, and title SHERIFFS AND BAILIFFS. If a bystander sees two or more persons fighting, he may arrest any of either of them, and is not bound to inquire who did the first wrong (*Timothy v. Simpson* (1838), 1 Cr. M. & B. 757, *Baynes v. Brewster* (1811), 2 Q. B. 375). As to fresh pursuit, see *R v Light* (1857), 27 L J (M C) 1, C C R., *R v Walker* (1854), Dears. C C 358, *Griffin v Colennan* (1859), 4 H & N 265, *R v Marsden* (1868), L R. 1 C C R. 131, *Timothy v. Simpson* (1835), 1 Cr M. & B. 757, *Price v Seeley* (1843), 10 Cl & Fin 28, H. L.

(*r*) *R. v. Light* (1857), 27 L J (M C) 1, C C R., per WILLIAMS, J., at p 3.



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If a breach of the peace has been committed, and there is nothing to show that the offender intends to renew the offence, there is no power at common law to arrest without a warrant (a).

In cases of misdemeanour other than those which amount to a breach of the peace there is, in the absence of statutory authority, no power to arrest without a warrant (t).

**Peace officers**

**611** Peace officers, *i.e.*, constables and other persons who are specially employed in the preservation of the peace (u), have at common law the same powers of arrest that private persons have, and certain additional powers

**Suspicion of**  
**felony.**

A peace officer may arrest on suspicion of felony, whether a felony has or has not been committed (x)

(a) *Timothy v Simpson* (1835), 1 Cr M & R 757, *Baynes v Brewster* (1841), 2 Q B 375, *R v Walker* (1854), Deas O C 358, *R v Marsden* (1868), L R 1 C C R 131, but see *R v Light* (1857), 27 L J (M C) 1, O O R. *Quære* whether, apart from statute, a private person has not the power of arresting an offender committing a misdemeanour and injuring such person's property, if there is no other way of protecting the property (see 2 Roll Abt tit Trespass, Imprisonment, 559, E, *Allen v London and South Western Rail Co* (1870), L R 6 Q B 65, *Hanson v Waller*, [1901] 1 K B 390, *Abrahams v Deakin*, [1891] 1 Q B 516, O A, *Stevens v Hinshelwood* (1891), 55 J P 341, O A)

(t) *Fox v Guunt* (1832), 3 B & Ad 798, *Mathews v Biddulph* (1841), 3 Man & G 390, but see *Holyday v Oxenbridge* (1631), Cro Car 234, 2 Hawk P C, c 12, s 20

(u) As to who is a peace officer, see *Cliffe v Littlemore* (1803), 5 Esp 39. The officers specially employed in the preservation of the peace are (1) justices of the peace, who may themselves apprehend or order by word only the apprehension of any persons committing a felony or breach of the peace in their presence, (2) sheriffs, (3) coroners, both of whom may apprehend without warrant any felon in their jurisdiction, (4) constables, (5) watchmen (4 Bl Com 289). Constables may be county or borough or parish or special constables. As to the powers of constables at common law, see 1 Bl Com 355. As to special constables, see Special Constables Act, 1831 (1 & 2 Will 4 c 11), Special Constables Act, 1835 (5 & 6 Will 4, c 43), Special Constables Act, 1838 (1 & 2 Vict c 80), Police Act, 1890 (53 & 54 Vict c 46), s 28. As to constables on canals or rivers, see Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50), s 1. As to constables appointed by the Chancellors or Vice-Chancellors of the Universities of Oxford and Cambridge, see Universities Act, 1825 (6 Geo 4, c 97), s 1. Watchmen, before the establishment of the present police force, were appointed to assist constables, but watchmen having the power of constables may now be appointed under the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c 90), s 42. Water bailiffs, with similar powers, are appointed under the Salmon Fishery Act, 1865 (28 & 29 Vict. c 121), s. 27, Salmon Fishery Act, 1878 (36 & 37 Vict c 71), s 36 (4), and Freshwater Fisheries Act, 1884 (47 Vict c 11), s 3 (see title FISHERIES). As to the high constable of the hundred, see 1 Bl Com 344, and High Constables Act, 1869 (32 & 33 Vict. c 47). See generally, title POLICE.

(x) *Samuel v Payne* (1760), 1 Doug (K B) 339, *Williams v Dawson* (1788), cited in *Hobbs v Branscomb* (1813), 3 Camp 420, at p. 421; *Lawrence v Hedger* (1810), 3 Taunt 14, *Hobbs v Branscomb*, *supra*, 420, *Beckwith v Philby* (1827), 6 B & C 635, *Davis v Russell* (1829), 5 Bing 354, *Nicholson v Hardwick* (1833), 6 C & P. 495, *Hadley v Perks* (1866), L R 1 Q B, per BLACKBURN, J., at p 456. *Sembla*, a constable is not justified in apprehending a person without warrant on suspicion of having received stolen goods, if the constable has no other evidence against such person than the statement of the thief (*Isaacs v Brand* (1817), 3 Stark 167). Knowledge by a constable that a warrant has been issued by a duly authorised magistrate for the arrest of a person for felony,



It is the duty of a peace officer, on a reasonable charge of felony being made to him by a private person against anyone else, to take the supposed offender into custody (y).

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**612.** In cases of misdemeanour a peace officer, like a private person, has at common law no power of arresting without a warrant, except when a breach of the peace has been committed in his presence or when there is reasonable ground for supposing that a breach of the peace is about to be committed or renewed in his presence (a)

A peace officer is justified in receiving into custody from a private person a supposed offender whom the private person has lawfully arrested without a warrant (b)

If a peace officer sees a breach of the peace committed, or is assaulted or obstructed in the arrest of a felon, he can, if there is a reasonable necessity, call upon a private person for his assistance

or that an indictment has been found against such a person, is sufficient ground of reasonable suspicion to justify an arrest by the constable, although no warrant has been handed to him (*Creagh v Gamble* (1888), 24 L. R. Ir 458, Dalton, Country Justice, 447, 1 East, P. C. 300)

(y) *Hedges v Chapman* (1825), 2 Bing 523, *Cowles v Dunbar* (1827), 2 C. & P. 565, *Hogg v Ward* (1838), 3 H. & N. 417 "Whether a felony has been committed or not, if an individual charges a constable to take a party into custody, no action will lie against the constable, because in such a case it is his duty to act and not to deliberate" (*Hedges v Chapman, supra, per Best, J.*, at p. 526) "If a person comes to a constable and says of another *simpliciter*, 'I charge this man with felony,' that is a reasonable ground, and the constable ought to take the person charged into custody. But if from the circumstances it appears to be an unfounded charge, the constable is not only not bound to act on it, but he is responsible for so doing" (*Hogg v Ward, supra, per Bramwell, B.*, at p. 422, see *M'Cloughan v Clayton* (1816), Holt (N. R.), 478)

(a) See p. 297, *ante*, *Griffin v Coleman* (1859), 4 H. & N. 265, *Hardy v Murphy* (1795), 1 Esp. 294, *Routh v Hanley* (1826), 2 C. & P. 288, *Levy v. Edwards* (1823), 1 C. & P. 24, *R. v. Bright* (1830), 4 C. & P. 367. A magistrate has no power to arrest for a misdemeanour committed in his presence, where there is no breach of the peace and where it is not necessary to arrest the offender to prevent the renewal of the act (*R. v. Poe* (1866), 15 L. T. (N. S.) 37, *per Pigot, C. B.*, at p. 40). A constable may apprehend anyone who aids or abets those who commit a breach of the peace in his presence (*Levy v. Edwards, supra*, at p. 43). If an offender is apprehended and is in the custody of a peace officer, and a person espouses his cause and encourages him to resist the officer, he may arrest such person (*White v Edmunds* (1792), Peake, 123). If an affray has happened and a blow or wound has been given, and it seems likely that a felony will be committed, a constable may take the offender into custody without a warrant, although he was not present, when the affray took place. But unless there is reasonable ground for believing that a felony will probably be committed, there is no power of arrest (*Couper v Henley* (1797) 2 Esp. 540)

(b) See *Timothy v Simpson* (1835), 1 Cr. M. & R. 757, *R. v. Walker* (1851), Dears. C. C. 358; *R. v. Light* (1857), 27 L. J. (M. C.) 1, C. O. R.; *Derreault v Warburley* (1855), 5 E. & B. 188, *R. v. Marsden* (1868), L. R. 1 C. C. R. 131, *Baynes v Brewster* (1841), 2 Q. B. 375, and p. 296, *ante*. If a breach of the peace has been committed but is over, and the offender has quitted the spot where the breach was committed and there is nothing to show that he intends to renew the offence (e.g., when he runs away on the constable being sent for), there is nothing to justify arrest by the constable on the information of the person complaining (*Baynes v Brewster, supra*, see *R. v. Light, supra*, *Cook v. Nethercote* (1834), 6 C. & P. 741).

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 power to  
 arrest without  
 warrant.

in arresting an offender, and such person commits an indictable offence if he refuses to aid the constable (c).

613 There are a large number of statutes which expressly authorise arrest without a warrant. Such power is in some cases given generally to any person (d), in some cases to certain specified

(c) See *R v Brown* (1841), Car & M 314, and p 506, *post*. So it is the duty of magistrates at the time of a riot to keep the peace and restrain rioters and pursue and take them, and to enable the magistrates to do this they may call on all the King's subjects to assist them, and all the King's subjects are bound to do so upon reasonable warning (*R v Pinner* (1832), 5 C & P 254, and see the Riot Act, 1714 (1 Geo 1, stat 2, c 5), s 3). Persons who aid the magistrates or constables in a case of necessity are protected from the consequences of their acts (*Redford v Burley* (1822), 3 Stark 76, *Staught v Gee* (1818), 2 Stark 445).

There was an old common law process of pursuing felons and those who had dangerously wounded another called "hue and cry," which could be raised by precept of a justice of the peace or by a peace officer or by any private man that knew of a felony, the party raising it had to acquaint the constable of the vill with all the circumstances which he knew of the felony and the person of the felon, and thereupon it was the duty of the constable to search his own town and raise all the neighbouring vills and make pursuit with horse and foot. In the prosecution of such hue and cry the constable and his attendants had the same powers, protection, and indemnification as if acting under a warrant of a justice of the peace (4 Bl Com 290, 2 Hawk 1<sup>o</sup> C, c 12, s 6, p 115). A person who joined in following a suspected felon upon a hue and cry was justified in arresting the party pursued, even though no felony had been committed, for the person who so joined was under the same protection as the constable (1 Hale, P C 464). The statutes relating to hue and cry (13 Edw 1, stat 2, co 1 and 4, 28 Edw 3, c 11, 27 Eliz c 13, and 8 Geo 2, c 16) made the duty of raising and following the hue and cry imperative by imposing on the hundred a liability to make compensation for robberies, if the robber was not taken, and other statutes (e.g., 9 Geo 1, c 22) made the hundred responsible for damages done by persons riotously and tumultuously assembled, if the offenders were not convicted. The statutes as to hue and cry were repealed by 7 & 8 Geo 4, c 27, and the other statutes by 7 & 8 Geo 4, c 31, and the only relic of the former proceeding against the hundred is the remedy which a person who sustains a loss through the destruction of a house, building or any property thereon, or the plundering of a stranded ship or boat, or the destruction of machinery by persons riotously assembled together has against the police authority of the district (Riot (Damages) Act, 1856 (49 & 50 Vict c 38), s 2). But the liability of every person in the county to be ready and apparelled at the command of the sheriff and at the cry of the county to arrest a felon still remains (Sheriffs Act, 1887 (50 & 51 Vict c 55), s 8 (1)) and a person who followed at the cry of the county and arrested a supposed felon would, it seems, be still entitled to the same protection, as if he were a peace officer.

(d) E.g., any person may apprehend without warrant anyone found committing an indictable offence in the night, i.e., between 9 p.m. and 6 a.m. (Prevention of Offences Act, 1851 (14 & 15 Vict c 19), ss 11, 13), or anyone found committing any offence punishable by virtue of the Larceny Act, 1861 (24 & 25 Vict c 96) (see *ibid*, s 103) (except the offence of unlawful angling in the daytime, *ibid*, s 24), or anyone committing an offence punishable by virtue of the Public Stores Act, 1875 (38 & 39 Vict c 25) (*ibid*, s 12, see also *Doumoulin v Capel* (1867), L R 2 C P 461, *Field v Musgrove* (1867), 16 L R 536; *Leeds v Hart* (1868), L R 3 C P 322, and compare *Morris v Wise* (1860), 2 F & F 51), or anyone found committing an indictable offence against the Coinage Offences Act, 1861 (24 & 25 Vict c 99) (see *ibid*, s 31), or anyone found offending against the Vagrancy Act, 1824 (5 Geo 4, c 83) (see *ibid*, s 8; and *Horley v Rogers* (1860), 2 E & E 674), or anyone found committing an offence against s 146 of the Spirits Act, 1880 (43 & 44 Vict c 24), or anyone who is guilty of riotous or disorderly behaviour in any

persons or under certain conditions, as well as to constables or other peace officers (e), and in some cases to constables or other peace officers alone (f)

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highway or other public place, or is drunk on any highway or other public place, while he is in charge of any carriage etc., or is drunk when in possession of any loaded firearms (Licensing Act, 1872 (35 & 36 Vict c 94), s 12), or is found drunk in any highway or other public place and appears to be incapable of taking care of himself (Licensing Act, 1902 (2 Edw 7, c 28), s 1) Under the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c 90), s 55, any person who sees anyone unlawfully breaking damaging etc a lamp, watch house etc, erected under the authority of the Act may apprehend the offender, and any other person may assist in such apprehension (*ibid*, s 55) A youthful offender detained in a certified reformatory school or a child detained in a certified industrial school may be apprehended, if while being so detained he escapes from such school (Children Act, 1908 (8 Edw 7, c 67), s 72 (1) and (2)) Under the Customs Consolidation Act, 1876 (39 & 40 Vict c 36), ss 179, 186 190 any person committing an offence (smuggling etc) under one of those sections may be detained Under the Army Act, 1881 (44 & 45 Vict c 58), s 156, any person found committing an offence against that section may be apprehended

(e) Thus, under the Malicious Damage Act, 1861 (24 & 25 Vict c 97) s 61, any peace officer or the owner of the property injured or any person authorised by him, may arrest any person found committing any offence against the Act So, under the Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 66, any constable or the owner of property with respect to which an offence punishable under that Act is committed, or any person authorised by him, may arrest a person found committing such offence Similar provisions are contained in the Town Police Clauses Act, 1847 (10 & 11 Vict c 89) (see s 15, see also Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 7) Under the Larceny Act, 1861 (24 & 25 Vict c 96), any person to whom any property is offered to be sold, pawned or delivered, if he has reasonable cause to suspect that any offence punishable under that Act has been committed with respect to such property, is authorised and, if it is in his power, required to apprehend the person offering such property (*ibid*, s 103, see also the Canals (Offences) Act, 1840 (3 & 4 Vict c 50), s 12, and the Army Act, 1881 (44 & 45 Vict c 58), s 156) Under the Pawnbrokers Act, 1872 (35 & 36 Vict c 93), where any offence mentioned in s 34 of the Act is committed, or where on an article being offered in pawn to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker may seize and detain the person (*ibid*, s 34, and see *Howard v Clarke* (1888), 20 Q B D 558) Under the Night Poaching Act, 1828 (9 Geo 4, c 69), if any person is found committing the offence of unlawfully taking or destroying any game or rabbits by night in any land, or of unlawfully entering or being by night in any land with any gun, net etc for the purpose of taking or destroying game, the owner or occupier of such land, or any person having a right or reputed right of free warren or free chase thereon, or the lord of the manor or reputed manor wherein such land may be situate, or any gamekeeper or servant of any of these persons, or any persons assisting such gamekeeper etc., may apprehend such offender upon such land, or, in case of pursuit being made, in any other place to which he may have escaped therefrom (*ibid*, s 2) Under the Game Act, 1831 (1 & 2 Will. 4, c 32), where any person is found on any land or in any of the King's forests, parks, chases or warrens in the daytime, in search or pursuit of game etc, any person having the right of killing the game upon such land, or the occupier of the land or any gamekeeper or servant of either of them, or any person authorised by either of them, or an officer of the forest etc, may require the person so found forthwith to quit the land where he is found, and also to tell his christian name, surname, and place of abode If the person so found does not give his real name or place of abode, or gives a description of his place of abode which is illusory for the purpose of discovery, or wilfully continues or returns upon the land, the person who requires the name etc, and any persons acting by his order and in his aid, may

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apprehend the offender (*ibid.*, s 31) Under the Highway Act, 1836 (5 & 6 Will 4, c 50), the surveyor of highways, assistant surveyor, and such other person as they shall call to their assistance, or any other person witnessing the commission of an offence under the Act, may seize the offender, if his name is unknown (*ibid.*, s 79, and see s 78)

Under the Railway Regulation Act, 1840 (3 & 4 Vict c 97), if any person wilfully obstructs or impedes any officer or agent of any railway company in the execution of his duty upon any railway etc., and refuses to quit upon request made by any officer or agent of the company, any such officer or agent, or any person whom he may call to his assistance, may seize and detain such person (*ibid.*, s 16) Under the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict c 20), all persons acting on behalf of a railway company, and all constables and peace officers, may apprehend and detain any person who is discovered in or after committing or attempting to commit any of the offences mentioned in s 103 of the Act (evading payment of fare etc.) (*ibid.*, s 104) Any officer or agent of a railway company, and all persons called by him to his assistance, may seize and detain any person who shall have committed an offence against the Act or the special Act of the railway company, and whose name is unknown to such officer or agent (*ibid.*, s 105) Under the Regulation of Railways Act, 1854 (52 & 53 Vict c 57), any officer of the railway company, or any constable, may detain a passenger who fails, after request by such officer, either to produce or to deliver up his ticket or to pay his fare, and also fails on request by such officer to give his name and address (*ibid.*, s 5) Under the Tramways Act, 1870 (33 & 34 Vict c 78), s 52, any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, may seize and detain any person discovered either in or after committing or attempting to commit any offence mentioned in s 51 of the Act (evading payment of fare etc.) (*ibid.*, s 52) Under the Merchant Shipping Act, 1894 (57 & 58 Vict c 50), s 267 (3), the master or other officer of a duly certificated passenger steamer may detain any person who commits any offence against that section (molesting passengers, evading payment of fare etc.) Under the Poor Law Amendment Act, 1834 (4 & 5 Will 4, c 76), s 92, if any person carries etc., or attempts to carry etc., into any workhouse any spirituous or fermented liquor without the order in writing of the master, the master, or any officer of the workhouse acting under his direction, may apprehend the offender or cause him to be apprehended Under the Act 1 Mar, sess 2, c 3 ("for preserving peace during divine service"), any constable or churchwarden of the parish etc where an offence under the Act is committed, or any other officer or other person present at the time of the offence, may arrest an offender against the Act (*ibid.*, s 1, and see *Williams v Glenister* (1821), 2 B & C 699) Under the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict c 32), any person guilty of an offence under the Act (brawling etc in church) may, "immediately and forthwith" after the offence is committed, be apprehended by any constable or churchwarden of the parish etc where the offence is committed (*ibid.*, s 3, and see *Kennet v St Paul's Dean and Chapter*, [1905] 2 K B 249, *Cope v Barber* (1872), L R 7 C P 393) A person committing an offence under the Revenue Act, 1862 (25 & 26 Vict c 22), s 31 (selling casks without a licence), may be apprehended by any constable or officer of Inland Revenue Under the Pedlars Act, 1871 (34 & 35 Vict c 96), s. 18, if a person acting as a pedlar refuses to show his certificate or has no certificate, or refuses to allow the opening or inspection of his pack etc. by a constable or officer of the police, such person may be apprehended by any of the persons authorised to demand the production of the pedlar's certificate, or any other person acting by the order or at the request or in aid of such person. Under the Hawkers Act, 1888 (51 & 52 Vict c. 33), s. 6, any officer of Inland Revenue or officer of the peace may arrest a person found committing an offence against that section (hawking without licence etc.) Under the Explosives Act, 1875 (38 & 39 Vict c 17), s 78, any person who is found committing an offence for which he is liable to a penalty under the Act, and which tends to cause an explosion etc. in or about any factory etc., may be apprehended by a constable or an officer of the local authority, or by the occupier or servant etc. of the occupier of the factory etc Under the Metropolitan Board of Works Act, 1877 (40 Vict c. viii), s. 9, any constable or any officer of the London County Council (see Local Government Act, 1888 (51 & 52 Vict. c 41), s. 119, may seize and detain

any person committing or having committed any offence against the Metropolitan Board of Works Act, 1877 (40 Vict. c. viii.), or any bye-law thereunder, if the name or residence of such person is unknown to such officer. Under the Naval Deserters Act, 1847 (10 & 11 Vict. c. 62), s. 9, any person reasonably suspected of being a deserter from the King's navy may be apprehended by the constable of any place where such person is found and, if no such constable can be immediately met with, by any person in the King's service. Under the Army Act, 1881 (44 & 45 Vict. c. 58), s. 154, any person reasonably suspected of being a deserter from the army may be apprehended by a constable or if no constable can be immediately met with, by any other officer or soldier or "other person." As to "military custody," see *ibid.*, s. 54.

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(f) Thus, any constable or peace officer may apprehend without warrant any person whom he shall find lying or loitering in any highway, yard, or other place, and whom he shall have good cause to suspect of having committed or being about to commit any felony mentioned in the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100) (see *ibid.*, s. 6b), or any felony against the Larceny Act, 1861 (24 & 25 Vict. c. 96) (see *ibid.*, s. 104), or against the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97) (see *ibid.*, s. 57). If a sheriff encounters any resistance in the execution of a writ, he is to take with him "the power of the county" and to go in proper person "to do execution," and may arrest the resisters and commit them to prison, and every such resister is guilty of a misdemeanour (Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2)). Under the Profane Oaths Act, 1743 (19 Geo. 2, c. 21), s. 3, any constable or other peace officer may seize, secure and detain any person "who shall profanely swear or curse in the presence and hearing" of such constable and who shall be unknown to him. Under the Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1), s. 2, any justice of the peace or peace officer, or any other person acting in their aid or assistance, may disperse an unlawful meeting or assembly prohibited by the Act (i.e., for the purpose of training or drilling persons to the use of arms without lawful authority), and may arrest and detain any person present at, or aiding, assisting or abetting, any such assembly or meeting. Under the Hosier v Act, 1843 (6 & 7 Vict. c. 40), s. 9, every peace officer and constable, and every watchman duly appointed by law, during such time as he shall be on duty, may apprehend, or cause to be apprehended, any person whom he may reasonably suspect of having or carrying or in any way conveying at any time after sun setting and before sun rising any woollen etc. materials intrusted to any person for the purpose of being manufactured etc., or any tools or apparatus intrusted to any person for manufacturing such materials, if it is suspected that such materials etc. have been or are being purloined, embezzled or otherwise fraudulently disposed of, see also the Frauds by Workmen Act, 1777 (17 Geo. 3, c. 56) s. 11. Under the Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 13, any constable, upon his own view, or upon the complaint and information of any other person who shall declare his name and place of abode to the constable may seize and secure any offender against the Act. Under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 3, any constable in any police district, if authorised in writing by the chief officer of police in that district, may take into custody any convict who is the holder of a licence granted under the Penal Servitude Acts, if it appears to such constable that such convict is getting his livelihood by dishonest means (see also *ibid.*, s. 7). Under the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 2, any constable may take into custody any holder of a licence under the Penal Servitude Acts (see *ibid.*, s. 11) or any person under the supervision of the police in pursuance of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112) whom he reasonably suspects of having committed "any offence." Under the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 25, any constable may demand the name and address of any person found on any licensed premises at a time when they should be closed, and if such person fails to give his name or address, or if the constable has reasonable ground to suppose that the name or address given is false, and requires evidence of the correctness of the name or address given, and such person fails to give such evidence, the constable may apprehend such person. Similar provisions are contained in the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 17, in the case of persons found on premises where intoxicating liquor is unlawfully sold or kept. Under the Indecent Advertisements Act, 1889 (52 & 53 Vict. c. 18), s. 6, any constable or other peace officer may arrest any person

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**614** Where a felony or treason has been actually committed, an arrest without warrant of a person reasonably suspected of having committed the offence is lawful at any time after its commission (*g*)

And where no felony has in fact been committed, a peace officer may, it seems, arrest a person on suspicion at any time after the commission of the act which is supposed to be a felony (*h*).

whom he shall find committing any offence against the Act Under the Military Lands Act, 1892 (55 & 56 Vict. c 43), s 17, any person who commits an offence against any bye-laws under the Act (see *ibid*, s 14) may be taken into custody by any constable or officer authorised in manner provided by the bye-laws Under the Diseases of Animals Act, 1894 (57 & 58 Vict c 57), s 43, if a person is seen or found committing, or is reasonably suspected of being engaged in committing, an offence against the Act, a constable may stop and detain him, and if his name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the constable may apprehend him Under the Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 4, and the Children Act, 1908 (8 Edw 7, c 67), s 19, any constable may take into custody any person who within view of such constable commits an offence under the Act of 1904, or under Part II of the Act of 1908, or under ss 27, 55, or 56 of the Offences against the Person Act, 1861 (21 & 25 Vict c 100), or any offence against anyone under the age of sixteen under ss 5, 42, 43, 52 or 62 of that Act, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), or under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict c 34 and 60 & 61 Vict c 52), or any other offence involving bodily injury to anyone under the age of sixteen, and a constable may also take into custody any person who has committed, or who he has reason to believe has committed, any of the offences mentioned above, if the constable has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable Under the Street Betting Act, 1906 (6 Edw 7, c 43), s 1, any constable may take into custody without warrant any person found committing an offence under the Act Special powers of arrest are given to the members of the metropolitan police force, see Metropolitan Police Act, 1839 (2 & 3 Vict c 47), ss 28, 34, 38, 46, 47, 48, 54, 62, 63, 64, 65, 66 (see *Stochen v Carter* (1831), 4 C & P 477, *Simmons v Millingen* (1840), 2 C B 524, *Bowditch v Balchen* (1850), 5 Exch 378), Metropolitan Police Act, 1864 (27 & 28 Vict c 55), s 1, Metropolitan Streets Act, 1867 (30 & 31 Vict c 134), ss 12, 23, and compare Metropolitan Streets Act, 1903 (3 Edw 7, c 17) As to the powers of arrest of the City of London Police, see stat 2 & 3 Vict c xciv, ss 18, 30, 31, 32, 35, 44, 45, 46, 48, and Metropolitan Streets Act, 1867 (30 & 31 Vict c 134), s 23, *Bowditch v Balchen*, *supra*, and see Public Stores Act, 1875 (38 & 39 Vict. c 25), s 6 Special powers of arrest are conferred upon constables acting under the Town Police Clauses Act, 1847 (10 & 11 Vict c 89) (see ss 14, 15, 36 of that Act), upon constables acting under the Municipal Corporations Act, 1882 (45 & 46 Vict. c 50) (see s 193 of that Act), upon canal and river police (see Canals (Offences) Act, 1840 (3 & 4 Vict c 50), ss 9, 10, 11), and upon water bailiffs (see Salmon Fishery Act, 1865 (28 & 29 Vict c 121), s 27, Salmon Fishery Act, 1873 (36 & 37 Vict c 71) s 36 (4), and Freshwater Fisheries Act, 1884 (47 Vict c 11), s 3) As to power to arrest by constables appointed by the Chancellors or Vice-Chancellors of the Universities of Oxford and Cambridge, see Universities Act, 1825 (6 Geo 4, c 97), s 3; and p. 270, *ante* Besides the powers of arrest without warrant that are expressly given by statute to constables, they may, subject to the conditions imposed by each particular statute, exercise all the powers of arrest that are given by a statute to "any person"

(*g*) See Dalton, Country Justice, pp. 447, 478 As to "hue and cry," see 1 Hale, P C 464; Post 309 310, and p 300, *ante* In the case of treason, it seems, the arrest must be effected within the time limited for the commencement of the prosecution (see p 456, *post*)

(*h*) But  $\frac{1}{2}$  a considerable time has elapsed after the facts have taken place

Where power is conferred by statute to arrest a person found or seen committing an offence or doing some specified act(i), the arrest must in most cases be made while the offence is actually being committed or the act is being done, or on fresh pursuit(s). Except on fresh pursuit the arrest cannot be made without a warrant, after the offence has been completed or the act done(j). Certain statutes, however, which give a power of arrest without warrant expressly authorise the making of the arrest after the offence has been committed (k).

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**615** A person who arrests another without a warrant, purporting to act under the powers of a statute, must satisfy all the conditions that the statute imposes, otherwise he incurs liability to an action for false imprisonment, or is deprived of the protection which he would otherwise have (l).

which give rise to the suspicion, a constable could hardly be justified in arresting without warrant on suspicion, unless the supposed felon has absconded, or unless the constable knows that the supposed felon has been indicted for felony or that a warrant has been issued for his arrest on a charge of felony by a duly authorised magistrate (see *Dalton, Country Justice*, p 447, 1 East, P O, 300, *Oreagh v Gamble* (1888), 24 L. R. Ir 458)

(i) See p 300, *ante*

(j) See *Downing v Capel* (1867), L. R. 2 C. P. 161, *Griffith v Taylor* (1876), 2 C. P. D. 194, C. A., *R v Curran* (1828), 3 C. & P. 397, *Simmons v Millingen* (1846), 2 C. B. 524, *Morris v Wise* (1860), 2 F. & F. 51, *Mathews v Biddulph* (1841), 3 Man. & G. 390. As to what is fresh pursuit, see *R v Howarth* (1828), 1 Mood. C. C. 207. There are some offences which a person cannot be "found committing," because they depend upon circumstances which are not all apparent at any particular time. Thus, generally speaking, a person cannot be "found committing" the offence of embezzlement, except in such a case as where a servant who ought to put money received on behalf of the master into the master's till is seen putting it into his own pocket. Where the charge against a servant was that he had embezzled various sums "within the last fortnight," it was held that s. 103 of the Larceny Act, 1861 (24 & 25 Vict. c. 86) did not apply, and that the servant could not be arrested without a warrant as being found committing the offence (*Field v Musgrove* (1867), 16 L. T. 536). So a person cannot be "found committing" the offence, under s. 3 of the Vagrancy Act, 1824 (6 Geo. 4, c. 83), of wilfully refusing or neglecting to maintain his family whom he is legally bound to maintain, and whom he has means to maintain, so that they become chargeable to the parish (*Horley v. Rogers* (1860), 2 E. & B. 674).

(k) See Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 104, 154, Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 52, Metropolitan Board of Works Act, 1877 (40 Vict. c. viii), s. 9, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 2, and pp. 302, 303, *ante*.

(l) See *Simmons v Millingen* (1846), 2 C. B. 524, *Bowditch v Balchin* (1850), 5 Exch. 378, *R v Curran*, *supra*, *Poulton v London and South Western Rail Co* (1867), L. R. 2 Q. B. 534. A private person who lawfully arrests another without a warrant has all the protection of a constable, and if the person arrested kills the arrester, the act may amount to murder (*R v Curran*, *supra*, and see p. 573, *post*). If a person arrests another in pursuance of a power given by any Act of Parliament, an action against him in respect of any such act must be commenced within six months after the act complained of (Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, *see title LIMITATION OF ACTIONS*). A person is entitled to the benefit of this Act if he honestly and *bona fide* believes that he is acting in pursuance of an Act of Parliament, whether there be reasonable ground for such belief or not (*Hermann v. Seneschal* (1862), 13 C. B. (N. S.) 392, *Roberts v. Orchard* (1863), 2 H. & C. 769, *Ex Oh*, *Chamberlain v King* (1871), L. R. 6 C. P. 474 (explaining *Leete v. Hart* (1868), L. R. 3 C. P. 322); and see *Nathan v. Cohen* (1812), 3 Camp. 287).



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**Handing over  
of person  
arrested to  
a constable  
or justice.**

**Arrest under  
Summary  
Jurisdiction  
Act, 1879**

**616** A private person who arrests another under a common law power can only detain him for a reasonable time, and must then either set him free or hand him over to a constable or take him before a justice of the peace (*m*)

If the suspected offender is not liberated and is not taken before a justice with reasonable expedition and by a direct road, the person who arrests is liable to an action of trespass (*n*).

Statutes which authorise a private person to arrest without warrant commonly contain a direction that the person arrested shall be taken before a justice of the peace (*o*), or a direction that he shall be conveyed or delivered to a peace officer or constable in order to his being conveyed as soon as reasonably or conveniently may be before a justice of the peace (*p*)

If a constable or other peace officer arrests a person without warrant, such person must be taken as soon as reasonably may be before a justice of the peace (*q*).

A person arrested without warrant for an offence punishable on summary conviction must be brought before a court of summary jurisdiction as soon as practicable after he is taken into custody (*a*)

If it is not practicable to bring him before a court of summary jurisdiction within twenty-four hours after he is taken into custody,

(*m*) *Wright v Court* (1825), 4 B & C 596 In some cases there may be a power to detain a person for a reasonable time for the sake of preserving peace, but no power to take him before a justice, such a person should be liberated when the reasonable time has elapsed (see *Williams v Glenister* (1824), 2 B & C 609, 2 Hawk P O, c 12, s 19)

(*n*) *Wright v Court*, *supra*, *Morris v Wise* (1860), 2 F & F 51 A private person cannot apprehend another upon suspicion of felony for the purpose of taking him to the place where the felony was committed in order to ascertain whether he was the offender (*Hall v Booth* (1834), 3 Nev & M (κ B) 316) If a private person arrests another without warrant and hands him over to a constable, and the offender is not brought before a justice within a reasonable time, the private person is liable for the delay, except, it seems where the statute under which he is acting authorises him to deliver the offender to a constable (see *Wright v Court*, *supra*)

(*o*) See Larceny Act, 1861 (24 & 25 Vict c 96), s 103, under which the person found committing must be "immediately apprehended" and "forthwith taken" before some neighbouring justice of the peace (see *R v Curran* (1828), 3 O & P 397), Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 61, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 179, Children Act, 1908 (8 Edw 7, c 67), s 72 (2)).

(*p*) See Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 31, Prevention of Offences Act, 1851 (14 & 15 Vict. c 19), s 11, Vagrancy Act, 1824 (5 Geo 4. c. 83), s 6, Lighting and Watching Act, 1833 (3 & 4 Will 4, c 90), s 55, Children Act, 1908 (8 Edw 7, c 67), s 72 (1), (2)

(*q*) See *Wright v Court*, *supra*, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 66, Larceny Act, 1861 (24 & 25 Vict. c 96), s 104, Malicious Damage Act, 1861 (24 & 25 Vict. c 97), ss 57, 61, Riot Act, 1714 (1 Geo. 1, stat 2, c. 5), s 3 Where two constables were taking a man before a magistrate on the charge of disorderly conduct, and the magistrate met them in the street and sent the prisoner back to the lock-up and told the constables to bring him up for examination the next day, it was held that the magistrate was liable to an action for trespass for sending the plaintiff back to the lock-up, as he ought to have either inquired into the case on the first day, or to have told the constables to take the prisoner before another magistrate (*Edwards v Ferris* (1836), 7 O & P 542)

(*a*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s 38.



a superintendent or inspector of police, or other officer of police of equal or superior rank or in charge of any police station, must inquire into the case, and, except where the offence appears to such officer to be of a serious nature, the prisoner must be discharged on his entering into a recognisance, with or without sureties, to appear before some such court (b).

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617. A private person or a constable may break open the outer door of the house of another in order to prevent a murder being committed in such house and to arrest the offender (c)

Breaking  
open doors  
to arrest

If a felony has been committed and the felon is followed to a house, and there is no other means of entering, a private person or constable may, it seems, break open the door of the house to arrest the offender (d). This may also be done if a felony will probably be committed unless a private person or constable inter-feres to prevent it (e)

If an affray occurs in the presence of a constable, and the offenders run away and are immediately pursued by the constable and they enter a house, then the doors may be broken open by the constable to apprehend them in the course of such immediate pursuit (f)

Before doors are broken open to effect an arrest due notice must be given and admission be demanded and refused (g)

#### (iii) Arrest under Warrant

618 A justice's warrant for arrest can only be executed by a constable or peace officer (h)

Execution of  
warrants

It may be directed to any constable by name, or generally to the constable of the parish or other district within which it is to be executed, or to such constable and all other constables or peace officers in the county or other district within which the justice issuing the warrant has jurisdiction, or generally to all the constables or peace officers within such county or district

The warrant states shortly the offence on which it is founded and that an information has been sworn, or facts on which it is based

(b) Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 38, see Metropolitan Police Act, 1859 (2 & 3 Vict c 47), ss 70, 71, Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s 227, Summary Jurisdiction Act, 1884 (47 & 48 Vict c 43), s 9. A person arrested without a warrant under the Game Act, 1831 (1 & 2 Will 4, c 32), cannot be detained for a longer period than twelve hours from the time of his apprehension, but must be brought before some justice of the peace within that time, and if he cannot, he must be discharged (*ibid*, s 31)

(c) *Handcock v Baker* (1800), 2 Bos & P 260

(d) See *Smith v Shirley* (1846), 3 C B 142, 4 Bl. Com 289. It seems that reasonable suspicion merely does not authorise a private person to break open doors to arrest (4 Bl. Com 290).

(e) *Handcock v Baker*, *supra*, and 2 Hale, P C 95.

(f) 2 Hawk. P C, c. 14, s 8, *R v Marsden* (1868), L. R. 1 C C R 141

(g) Foat 320

(h) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 9. But a warrant under the Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 227, may be executed by a Customs officer. As to the protection of constables and other persons acting by their order and in their aid under a warrant from a justice, see Constables Protection Act, 1750 (24 Geo. 2, c. 44), s 6.

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proved on oath, and names or otherwise describes the offender; and it orders the person or persons to whom it is directed to apprehend the offender and bring him before the justice issuing the warrant, or before some other justice for the same district, to answer the charge (i).

**Local limits.**

**619** A warrant may be executed by apprehending the offender at any place within the county or place within which the justice issuing it has jurisdiction, or in case of fresh pursuit anywhere within the next county or place, and within seven miles of the border of the first county etc (k)

Where the warrant is directed to all constables or other peace officers within the county or other district in which the justice issuing it has jurisdiction, any constable or peace officer for any parish etc within such county or district may execute it within any parish etc situate within the jurisdiction of such justice, just as if the warrant was specially directed to such constable by name and although the place in which the warrant is executed is not within the parish etc for which he is constable or peace officer (k)

A warrant need not be made returnable at any particular time, but may remain in force until it is executed (l)

**Backing**  
**warrants.**

**620** If an offender against whom a warrant has been issued escapes out of the jurisdiction of the justice who issues the warrant, the warrant may be indorsed by a justice having jurisdiction in the place where the offender is, and may thereupon be executed either by the person bringing the warrant or by all other persons to whom it was originally directed or by any constable or peace officer of the county or place where the warrant is indorsed (m).

(i) See Indictable Offences Act, 1848 (11 & 12 Vict c 42), Schedule, Forms B and D, see also note (h) on p 291, *ante*

(k) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 10 See the corresponding provisions of the Summary Jurisdiction Act, 1848 (11 & 12 Vict c 43), s 3 Apart from these statutes a constable had no power to execute a warrant outside the limits of his own constablewick, unless he was specified by name, in which case his authority was co-extensive with that of the person issuing the warrant (1 Hale, P O 459, *R. v Weir* (1823), 1 B & C 288; *Gladwell v. Blake* (1834), 1 Cr M & R 636, *R v Sanders* (1867), L R 1 C. O R 75, *R v Cumpston* (1880), 5 Q B D 341, C C R.) A summons or a warrant issued by a justice of a borough to which the Municipal Corporations Act, 1882 (45 & 46 Vict c. 50), applies may be served or executed by the constable to whom it is directed in any county in which the borough or a part of the borough is situate, or at any distance not exceeding seven miles from the borough (*ibid.*, s. 223, *R v Cumpston*, *supra*, and see County and Borough Police Act, 1856 (19 & 20 Vict. s. 69), s. 6) As to assistance by one police force to another, see Police Act, 1890 (53 & 54 Vict c 45), s. 25

(l) It is doubtful whether a justice can withdraw his own warrant, but in a proper case the King's Bench Division of the High Court has power to order the withdrawal of a warrant (*R v Crossman* (1908), 98 L T 760) The warrant remains in force in spite of the death of the justice who issued it (Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 37). A warrant issued under s. 390 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), is only in force for 96 hours (*ibid.*, s. 380)

(m) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 11, see Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 3. English warrants may be

**621.** A constable, who is armed with a warrant for the arrest of a person whom the constable cannot lawfully arrest without a warrant, must have the warrant with him when he effects the arrest, otherwise the arrest is illegal (n).

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Person.

**622** No place gives any person protection from arrest (o). A constable having a warrant to arrest a person may after demanding and being refused admittance break open doors to effect an arrest (p)

Arrest may  
be at any  
place; and  
at any time.

An arrest on a criminal charge can be effected at any time of the day or night (q) A person may be arrested on Sunday for an indictable offence (r) No person, except the King and a foreign sovereign, is privileged from arrest on a criminal charge (s).

**623** In arresting and detaining a person reasonable force may be used A constable may justify the handcuffing of a prisoner, if he attempts to escape or if the handcuffing is necessary to prevent his escaping (t)

Use of force.

**624.** A constable may search a prisoner, if he behaves with such violence of language or conduct that the constable may reasonably think it prudent to search him in order to ascertain whether he has any weapon etc. with which he might do mischief (a)

Searching  
prisoners.

A constable and also, it seems, a private person may upon lawful arrest of a suspected offender take and detain property found in

backed in Ireland (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 12), the Isle of Man and the Channel Islands (*ibid.*, s 13, and see Criminal Justice Administration Act, 1851 (14 & 15 Vict c 55), s 18) and in Scotland, and *vice versa* (Indictable Offences Act, 1848 (11 & 12 Vict c 4) ss 14, 15) As to the arrest of fugitive offenders in other parts of the King's dominions, see Fugitive Offenders Act, 1881 (44 & 45 Vict c 69), Part I, as to extradition of offenders who have escaped abroad, see title EXTRADITION AND FUGITIVE OFFENDERS

(n) *Codd v Cobe* (1876), 1 Ex D 352, see *Galliard v Lorton* (1862), 2 B & S 363, *R v Chapman* (1871), 12 Cox, C O 4

(o) The privilege of sanctuary was abolished by 21 Jac 1, c 28, s 7 (repealed by Statute Law Revision Act, 1863 (26 & 27 Vict c 125), but see s 1) An arrest may be effected within the walls of the Houses of Parliament (Erskine May, Parliamentary Practice, 11th ed., 116), but a member cannot, it seems be arrested within the walls of Parliament while the House of which he is a member is sitting (*ibid.*, 117) As to the Royal Palaces and Courts of Justice, see *Fitzpatrick v Kelly* (1749), cited in *R v Stubbs*, 3 Term Rep 740.

(p) *Frost* 136, 320, *Burdett v Abbot* (1811), 14 East, 1, at pp 158, 162

(q) See Clerk and Lindell on Torts, 4th ed., 780

(r) *Rawlins v Ellis* (1846), 16 M & W 172, Sunday Observance Act, 1877 (29 Car 2, c 7), s 6, Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 4

(s) As to foreign ambassadors, see p 245, *ante*. As to members of Parliament, see *Long Wellesley's Case* (1831), 2 Russ & M 639 As to advocates, witnesses etc., see *Re Freston* (1883), 11 Q B D 545, C A; *Ex parte Lyne* (1822), 3 Stark 132

(t) *Osborn v Veitch* (1858) 1 F & F 317, *Levy v Edwards* (1823), 1 C & P 40, at p. 43, *Wright v Court* (1825), 4 B & C 596, *Lough v Cole* (1853), 6 Cox, C O 329, *R v Taylor* (1895), 59 J. P 393. As to beating or shooting by a constable, see *Levy v Edwards*, *supra*, *R. v. Dadeon* (1850), 2 Den 45, *Stocken v. Carter* (1831), 4 C & P. 477, *Barber v Oliver*, *Times*, 17th June, 1892, 13.

(a) *Lough v Cole* (1853), 6 Cox, C. C 329, at p. 332.

**NOTE 1.**  
**Securing**  
**Attendance**  
**of Accused**  
**Person.**

**Search**  
**warrants**

the offender's possession, if such property is likely to afford material evidence for the prosecution in respect of the offence for which the offender has been arrested (*b*)

**SUB-SECTION 3.—Search Warrants**

**625** A justice of the peace has at common law the power, on an information being sworn before him alleging a suspicion that larceny has been committed, to issue a search warrant authorising a search in any house etc in the day time for stolen goods and the arrest of any person found in possession of such goods (*c*)

Except in the case of stolen goods there is no power at common law to issue a warrant authorising the search of a house (*d*) But provision is made by statute for the issue of a search warrant in certain specified cases (*e*).

(*b*) *Dillon v O'Brien* (1887), 20 L R Ir 300, *Tyler v London and South Western Rail Co* (1884), Cab & El 285 A constable should not take property not in any way connected with the offence charged against the person arrested (*R v O'Donnell* (1835), 7 O & P 138, *R v Kinsey* (1836), 7 C & P 447, *R v Bass* (1849), 2 Car & Kir 822, *R v Jones* (1834), 6 C & P 343) As to orders for the restoration of property to a prisoner, see *R v Burgess* (1836), 7 O & P 488, *R v Rooney* (1836), 7 C & P 515, *R v Barnett* (1829), 3 C & P 600, *R v Frost* (1839), 9 C & P 129, at p 133, *Re Hue* (1880), 49 J P 261, *R v Pearce* (1852), 6 Cox, C C 117, *R v London Corporation* (1858), E B & E 609, *R v Rolfe* (1859), 5 J P 823

(*c*) 2 Hale, P C 113, 119, 150, Burns, Justice of the Peace, 30th ed., Vol V, 1180, see *Yee v Smith* (1822), 1 Dow & Ry (K B) 97, *Wyatt v White* (1860), 29 L J (Ex) 193, *Jones v German*, [1897] 1 Q B 374, C A In execution of a search warrant for stolen goods at common law, force may be used to break open doors, if admittance is demanded and refused but the warrant can only be executed in the day time (Greaves' Criminal Law Consolidation Acts, 2nd ed., p 400) It seems that by virtue of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 4, a search warrant may now be executed on a Sunday As to statutes enabling a search in the night time in certain events, see note (*e*), *post*

(*d*) See *Entick v Carrington* (1765), 19 State Tr 1030, 1067

(*e*) See Larceny Act, 1861 (24 & 25 Vict c 96), s 103, which applies the procedure as regards search warrants for stolen goods to goods in respect of which some offence under that Act other than larceny has been committed (see *Jones v German*, [1896] 2 Q B 418, and *supra*) As to goods stolen or unlawfully obtained, see Frauds by Workmen Act, 1748 (22 Geo 2, c 27), s 4, Frauds by Workmen Act, 1777 (17 Geo 3 c 56), s 10, Metropolitan Police Courts Act, 1839 (2 & 3 Vict c 71), s 25, Housew Act, 1843 (6 & 7 Vict c 40), ss 8, 14, Old Metal Dealers Act, 1861 (24 & 25 Vict c 110), s 4, Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 16, Pawnbrokers Act, 1872 (35 & 36 Vict c 93), s 36, Army Act, 1881 (44 & 45 Vict c 58), s 156 For other cases where search warrants may be issued or searches made, see the Bread Act 1836 (6 & 7 Will 4, c 37), s 11 (see as to London 3 Geo 4, c cvi, s 13), Gold and Silver Wares Act, 1844 (7 & 8 Vict c 22), s 11, Forgery Act, 1861 (24 & 25 Vict c 98), s 46, Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 27, Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 55, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 65, Petroleum Act, 1871 (34 & 35 Vict c 105), s 13, Explosives Act, 1875 (38 Vict c 17), s 73, Public Health Act 1875 (38 & 39 Vict c 55), s 119, Public Health (London) Act, 1891 (54 & 55 Vict c 76), s 97, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 203, Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 12, Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2, Vagrancy Act, 1824 (5 Geo 4, c 83), s 13, Gaming Act, 1845 (8 & 9 Vict c 109), s 3, Betting Act, 1853 (16 & 17 Vict c 119), s 11, Cruelty to Animals Act, 1876 (39 & 40 Vict c 77), s 13, Obscene Publications Act, 1857 (20 & 21 Vict c 83), s 1; Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 10, Children Act, 1908 (8 Edw. 7, c 67), s 24, Licensing Act,

SLCT 3—*Preliminary Examination before Justices.*SUB-SECT 1—*The Hearing*

**626** When a person charged with an indictable offence appears or is brought before a justice or justices having jurisdiction to hear the charge, the justice or justices can then proceed with the examination of the charge (*f*)

SECT 3  
Preliminary  
Examina-  
tion before  
Justices.

Appearance  
of accused  
before  
justices.

1874 (37 & 38 Vict c 49), s 17, Licensing Act, 1902 (2 Edw 7 c 28), s 29, Fugitive Offenders Act, 1881 (44 & 45 Vict c 69), s 24. See also Public Stores Act, 1875 (38 & 39 Vict c 25), s 6. Under most of these Acts the search warrant must be executed by a constable or other police officer, but under some of them a search by other persons is authorised (*e.g.*, Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2, Gold and Silver Wares Act, 1844 (7 & 8 Vict c 22), s 11, Petroleum Act, 1871 (34 & 35 Vict c 105), s 13, Public Health Act, 1875 (38 & 39 Vict c 55), s 119, Public Health (London) Act, 1891 (54 & 55 Vict c 76), s 97, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 203; Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 10). Some of the statutes under which search warrants may be issued authorise a search in the day time only (Frauds by Workmen Act, 1748 (22 Geo 2, c 27), s 4, Frauds by Workmen Act, 1777 (17 Geo 3, c 56), s 10, Gold and Silver Wares Act, 1844 (7 & 8 Vict c 22), s 11, Obscene Publications Act, 1857 (20 & 21 Vict c 83), s 1, Malicious Damage Act, 1861 (24 & 25 Vict c 29), s 55, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 65, Old Metal Dealers Act, 1861 (24 & 25 Vict c 110), s 4, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 204, Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 12). One statute (Pawnbrokers Act, 1872 (35 & 36 Vict c 93), s 36), authorises a search "in the hours of business" only. Two statutes authorise a search at any time by day or night (Metropolitan Police Courts Act, 1839 (2 & 3 Vict c 71), s 25, Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 27). One statute (the Explosives Act, 1875 (38 Vict c 17), s 73) authorises a search on Sundays as well as on other days. The other statutes mentioned above are silent as to the time at which a search may be made. Some of these statutes expressly authorise the use of force (breaking open doors etc.) if admittance is refused or resistance made (Metropolitan Police Courts Act, 1839 (2 & 3 Vict c 71), s 25, Gaming Act, 1845 (8 & 9 Vict c 109), s 3, Betting Act, 1853 (16 & 17 Vict c 119), s 11, Obscene Publications Act, 1857 (20 & 21 Vict c 83), s 1, Pawnbrokers Act, 1872 (35 & 36 Vict c 93), s 36, Explosives Act, 1875 (38 Vict c 17), s 73, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 203, Public Health (London) Act, 1891 (54 & 55 Vict c 76), s 97, Licensing Act, 1902 (2 Edw 7, c 28), s 29, Children Act, 1908 (8 Edw 7, c 67), s 24 (3). *Quære*, whether there is not in all cases of search warrants, as in warrants of arrest, a power to use force and break open doors, if admittance is demanded and refused (*Laumock v Brown* (1819), 2 B & Ald 592, *Burdett v Abbott* (1811), 14 East, 1, at pp 158, 162). Some of the statutes (Frauds by Workmen Act, 1777 (17 Geo 3, c 56), s 10, Metropolitan Police Courts Act, 1839 (2 & 3 Vict c 71), s 25, Hosiery Act, 1843 (6 & 7 Vict c 40), s 8, Army Act, 1881 (44 & 45 Vict c 58), s 156, Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2, Vagrancy Act, 1824 (5 Geo 4, c 83), s 13, Gaming Act, 1845 (8 & 9 Vict c 109), s 3, Betting Act, 1853 (16 & 17 Vict c 119), s 11, Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 10, Children Act, 1908 (8 Edw 7, c 67), s 24, Licensing Act, 1874 (37 & 38 Vict c 49), s 17) authorise arrest in certain cases of persons found on the premises searched.

(*f*) The procedure relating to the preliminary examination before justices is chiefly governed by the Indictable Offences Act, 1848 (11 & 12 Vict c 42). The accused person may appear before justices in obedience to a summons, or may be brought up before them in custody either with or without a warrant, or, if he is already in prison, may be brought before them under an order of the Secretary of State under the Prison Act, 1898 (61 & 62 Vict c 41), s 11. Any one of the magistrates appointed to act at any of the metropolitan police courts and sitting at such a court, any appendantary magistrate appointed for any other city, town etc. and sitting at a police court or other place appointed in that behalf, and the Lord Mayor of the City of London or any alderman of the City sitting at the

**SECT. 2.**  
**Preliminary**  
**Examina**  
**tion before**  
**Justices.**

Mansion House or Guildhall justice rooms in the City, may act alone in doing anything authorised by the Indictable Offences Act, 1848 (11 & 12 Vict c 42), ss 29, 30. It seems that any justice of the peace acting within his jurisdiction may hold the preliminary examination of a person accused of an indictable offence (*ibid*, s 17, where the expression used is "any justice or justices", but see the Criminal Law Act, 1826 (7 Geo 4, c 64), s 1, which provides that, if the charge is one of felony or suspicion of felony, one justice may take the examination and commit the accused to trial or discharge him, but if the whole evidence given before such justice neither raises a strong presumption of guilt nor warrants the dismissal of the charge, such justice must order the accused to be detained in custody until he be taken before two justices at the least). The room or building in which the examination is taken is not to be deemed an open court (see s 19 of the Indictable Offences Act, 1848), but according to some authorities s 19 has been altered by s 13 (11) of the Interpretation Act, 1889 (52 & 53 Vict c 63), and the law officers of the Crown on 1st December, 1884, advised that justices, even when taking an examination, must sit in open court as prescribed by the Summary Jurisdiction Act, 1848 (11 & 12 Vict c 43), s 12, and the Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 20 (see Douglas, Summary Jurisdiction Procedure, 9th ed, p 350). It is submitted, however, that s 19 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), shows sufficient indication of a "contrary intention" to exclude this interpretation. Moreover, a justice may take at a hospital the depositions of a witness who is dangerously ill, and such depositions, if taken in compliance with the requirements of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17, are admissible in evidence subsequently apart from the provisions of the Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s 6 (*R v Katz* (1900), 64 J P 807, and p 327, *post*). This appears to show that a justice may act under the Indictable Offences Act, 1848 (11 & 12 Vict c 42), in a place which is not an open court. A justice or justices duly authorised to act in the place where they sit have jurisdiction to inquire into charges in respect of—(1) Offences committed within the county etc for which the justice or justices act (*R v Deckley* (1867), 16 Cox, C O 331, C O R, see p 280, *ante*). (2) Offences committed outside the county etc for which the justices act, if the accused is residing or being or suspected to reside or be within the limits of the jurisdiction of the justices, and appears or is brought before them by a summons or warrant issued by them (see Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 1), or by a warrant issued outside their jurisdiction and backed by a justice within their jurisdiction, if such justice has directed that the accused should be brought before some justice or justices within his jurisdiction, and the prosecutor or some of the witnesses for the prosecution are then present in the county or place where the accused was apprehended (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 11). In such a case the justices must, it seems, give the accused an opportunity of calling witnesses for the defence (see p 317, *post*). If such justices are of opinion that the evidence is sufficient proof of the charge, they may commit the accused for trial or admit him to bail to appear at his trial in the county etc where the offence is alleged to have been committed. If the evidence is not sufficient, the justice or justices are to bind the witnesses over to give evidence and order the accused person to be taken before some justice or justices for the county etc where the offence is alleged to have been committed (*ibid*, s 22, and Schedule, Form R (1)). (3) Offences committed on the high seas, or within the Admiralty jurisdiction, or on land beyond the seas, if an indictment may legally be preferred in any place in England or Wales for such offence (see p 273, *ante*), and if a person charged with such an offence has been brought before the justice or justices under a warrant of a justice acting for the same county etc (*ibid*, s 2, see *R v Byrs* (1868), L R 3 Q B 487). A justice who acts for two districts adjoining each other may, while he is in one of these districts, act for the other district (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 5). All the acts of justices, and of any constable or officer in obedience thereto, are to be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justices act, as if the same were to all intents and purposes part of the county for which they act (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 7). As to the qualification of justices, see title **MAGISTRATES**.

The accused person must be present during the whole of the examination (g)

The object of the examination is not to determine the guilt or innocence of the accused, but to inquire whether the accused ought or ought not to be committed for trial (h)

The accused person has the right to be assisted by counsel or solicitor retained by him (i) The prosecutor (i.e., the person supporting the charge) must appear by himself or by counsel or solicitor (k).

**627** The proceedings are commenced by calling the name of the accused person. If he appears, the charge against him is read over.

The accused is not asked whether he is guilty or not guilty of the charge, but the case for the prosecution is commenced at once (l)

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Preliminary  
Examination  
before  
Justices.

Examination  
before  
Justices.  
Counsel etc.

Order of  
proceedings.

(g) See Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17, 18. The procedure under this Act is only applicable to the case of a person in the ordinary sense of the word, that is, to someone whose physical appearance before justices is possible (*ibid*, s 1, 17, 18). It seems, therefore, that there can be no proceeding under this Act for the examination of a charge against a body corporate, and that s 2 of the Interpretation Act, 1889 (52 & 53 Vict. c 63), as to "person" in a penal act including body corporate does not apply, as a "contrary intention" appears from the language of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 1, 17, 18, if a corporation is charged with an indictable offence, the proper proceeding is by way of indictment in the first instance. See also title CORPORATIONS, Vol VIII, p 390.

(h) *R v Carden* (1879), 5 Q. B D 1, *per* COCKBURN, C J, at p 6.

(i) *R v Griffiths* (1886), 54 L. T 280. Before the Indictable Offences Act, 1848 (11 & 12 Vict c 42), it was held that justices had a discretion whether they would admit or exclude an advocate (*Cox v Coleridge* (1822), 1 B & C 37, *R v Borron* (1820), 3 B & Ald 432, *R v Staffordshire Justices* (1819), 1 Chit 217, *Collier v Hulse* (1831), 2 B & Ad 663). S 17 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), contemplates the cross examination of the witnesses for the prosecution by counsel or solicitor for the accused. The accused has no right to have the case adjourned for the attendance of counsel or solicitor (*R v Cambridgeshire Justices* (1880), 44 J P 168, *R v Higgins* (1862), 5 L. T 605), but an adjournment for such attendance may (see Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 21), be granted, and should be granted, if the application for such an adjournment is made *bond fide*.

(k) If the prosecutor or someone on his behalf does not appear to support the charge, the charge will be dismissed, but if the non-attendance is caused by a mistake, a fresh summons should be issued (*R v Bennett* (1908), 72 J P 362). The proceedings do not abate by the death of the justice who issued the summons or warrant (Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 37), or of the person who instituted criminal proceedings (*R v Trulove* (1880), 5 Q B D 336). Any person may, it appears, take up the prosecution on the death of such person. Most prosecutions are now conducted at the instance of the police, but where there is a private prosecutor present and ready to proceed with the prosecution, he ought to have the conduct of the proceedings, except where the Director of Public Prosecutions takes up the prosecution (see *R v Taylor*, *Times*, 2nd November, 1896, p. 7).

(l) No objection can be taken to the information or complaint on which the summons or warrant in the case has been issued for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecution, nor can any such objection be taken to any such summons or warrant, if there is any such variance between the summons or warrant and the evidence that the examining justices think that the party charged has been deceived or misled, the justices, at the request of the party charged, may adjourn the hearing to some future day, and in the meantime remand the party charged or admit him to bail (Indictable Offences Act, 1848



**NOTE. 2**  
**Preliminary**  
**Examina**  
**tion before**  
**Justices.**

Opening of  
 case

Evidence.

If the prosecutor has counsel or solicitor to represent him, the counsel or solicitor may, if the examining justices think fit, make an opening speech giving the outlines of the case

After the close of the opening speech, or, if there is no counsel or solicitor present for the prosecution, immediately after the reading of the charge, the evidence is adduced (*m*).

(11 & 12 Vict c 42), ss 8, 9, 10, and see p 319, *post*) An objection by the defendant to the jurisdiction of the justices must, however, be taken before the hearing of the evidence begins, as otherwise the defendant may be considered to have waived the objection (*R v Hughes* (1879), 4 Q. B. D. 614, C. C. R.)

(*m*) The attendance of witnesses who will not voluntarily appear is secured by a summons issued by a justice on it being proved on oath or affirmation that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution and will not voluntarily appear. The summons is to be under the hand and seal of the justice, and requires the person whose attendance as a witness is desired to appear at a time and place mentioned in the summons before such justice or such other justice or justices for the same county, place etc., who shall be there, to testify what he knows concerning the charge. If the witness disobeys the summons and no just excuse is offered for the disobedience, then, on it being proved upon oath or affirmation that the summons was served on such person, either personally, or by leaving it for him with some person at his last or usual place of abode, the justice or justices before whom the person summoned should have appeared may issue a warrant under his or their hands and seals to bring the person summoned at a time and place mentioned in the warrant before the justice or justices issuing the warrant, or such other justice or justices of the same county etc., as shall then be there to testify concerning the matter. Such a warrant may be issued in the first instance on proof that it is probable that the person will not attend without being compelled, and it may be backed in the same way as a warrant of arrest (see p 303, *ante*), so that it may be executed out of the jurisdiction of the justice who issued it, if on the appearance of the person who is summoned or brought up on a warrant he refuses to take or be examined on oath or affirmation, or to answer questions put to him without offering any just excuse for such refusal, any justice of the peace then present and having jurisdiction there may by warrant under his hand and seal commit such person to prison for a term not exceeding seven days, unless he in the meantime consents to be examined and to answer (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 16). As to the form of summons in such a case, see schedule to the Indictable Offences Act, 1848 (11 & 12 Vict c 42), Form L (1), as to warrant to bring up the witness, see *ibid*, Form L (2), (3), as to warrant of commitment of a witness, see Form L (4). S 16 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), only authorises the issue of a summons to secure the attendance of a person as a witness, when such person is within the jurisdiction of the justice, a court of summary jurisdiction, however, may, by the Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 36, issue such a summons, when the person is outside the jurisdiction of the court, such a summons may be indorsed by a court of summary jurisdiction for the place where the person is or is believed to be, and if the person is served with a summons so indorsed and is paid or tendered a reasonable amount for his expenses, he must obey the summons, and on default is liable to be apprehended. It has been contended that by virtue of s 13 (1) of the Interpretation Act, 1889 (52 & 53 Vict c 63), s 36 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), now applies to the examination of a person charged with an indictable offence (see Douglas, Summary Jurisdiction Procedure, 9th ed., p 192). S 16 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), makes no provision for the case of a witness who attends voluntarily refusing to give evidence, but *semble* the justice or justices present have power to commit in such a case (see *Bennet v. Watson* (1814), 3 M. & S. 1, and *Evans v. Rees* (1840), 12 Ad. & El. 55). A justice has no power to order a witness to bring or produce documents, the only way of securing the production of documents by a witness is to serve him with a Crown Office *subpoena duces tecum*.



The statements of the witnesses must be made on oath or affirmation (n) in the presence of the examining justice or justices and of the accused person. The accused person, or his counsel or solicitor, has the right to cross-examine any witness (o), and the prosecutor, or his counsel or solicitor, can re-examine

NOTE 2.  
Preliminary  
Examina-  
tion before  
Justices.

Depositions.

The statements of each witness must be put into writing in the presence of the examining justices and of the accused (p), the statements are then known as depositions. The deposition of each witness must be read over to him, and must be signed by him, and the whole of the depositions must be signed by the examining justices (q)

As to procuring the attendance of witnesses for the defence, see p 313, note (b), *post*. The attendance of a witness who is in custody may be secured by a warrant issued by a judge of the King's Bench Division under the Criminal Procedure Act, 1863 (16 & 17 Vict c 30), s 9, or by an order in writing under the hand of a Secretary of State under the Prison Act, 1898 (61 & 62 Vict c 41), s 11.

(n) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17. See Oaths Act, 1888 (51 & 52 Vict c 46). As to statements by children, see p 328, *post*. In the case of a charge of an offence under the Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 27, 55, or 58, or any offence against a child under the age of sixteen years under *ibid*, ss 5, 42, 43, 52, or 62, or of an offence under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), or an offence under the Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), or Part II of the Children Act, 1904 (8 Edw 7, c 67), or under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict c 34, 60 & 61 Vict c 52), or any other offence involving bodily injury to a child under the age of sixteen years, if a child of tender years who is tendered as a witness does not in the opinion of the justices understand the nature of an oath, the evidence of such child may be received without oath, if such child has in the opinion of the justices sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but such evidence requires corroboration. The evidence of such child is to be deemed to be a deposition within the meaning of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17 (see Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 15, Children Act, 1908 (8 Edw 7, c 67), s 30).

(o) See *R v Prestridge* (1881), 72 L. T. Jo 93.

(p) Indictable Offences Act, 1848 (11 & 12 Vict c 42) s. 17. It is not enough, if the depositions are written down in the absence of the justice and read over and signed afterwards in his presence (*R v Watts* (1863) 33 L. J. (M. C.) 63, O. C. R., *R v Christopher* (1850), 1 Den 536, *Candle v Seymour* (1841), 1 Q. B. 889 and *Anon*, *cor* HAWKINS, J., at Winchester Assizes, April, 1882, Stone's Justices' Manual, 41st ed., 10, n (q), but see *R v Bates* (1869), 2 F. & F. 317). S. 17 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), provides that the statements are to be put in writing by the justice or justices who take the examination, but this duty is generally deputed to the clerk to the justices (see *R v Watts*, *supra*, *per* MARRIN, B., at p 64), see also *Ex parte Bottomley*, [1909] 2 K. B. 14. As to justices' clerks, see Justices Clerks Act, 1877 (40 & 41 Vict c 43), and title MAGISTRATES.

(q) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17, and Schedule, Form M. It is sufficient if a justice signs at the conclusion of all the depositions; he need not sign each witness's deposition separately (*R v Parker* (1870), 11 Cox, O. C. 478, O. C. R., approving and following *R v Lee* (1864), 4 F. & F. 63, and dissenting from *R v Richards* (1866), 4 F. & F. 860, which was decided under a misapprehension (see *R v Parker*, *supra*, at p 181). The dicta of Lord DENMAN, C. J., in *R v. London Corporation* (1844), 5 Q. B. 555, at p 564, and of ALDERSON, B., in *R v. Johnson* (1847), 2 Car. & Kir 354, at p 355, are on a different statute, are inconsistent with *R v Parker*, *supra*, and cannot be regarded as authorities. It is sufficient if all the depositions have one caption or title, it is not necessary that each deposition should have a separate caption (*R v. Johnson*, *supra*). It does not appear that any

## SECT. 2.

**Preliminary Examination before Justices.**

Accused to be asked if he wishes to say anything  
Caution to accused.

Statement of accused.

**628** After all the witnesses for the prosecution have been examined, the examining justices may, if they consider that the evidence for the prosecution is not sufficient to justify commitment, discharge the accused at once. If they think the evidence is sufficient, they must, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him and ask him if he wishes to say anything in answer to the charge. The accused must be cautioned, first, that he is not obliged to say anything, and, secondly, that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of guilt, but that whatever he may then say will be taken down in writing and may be given in evidence against him on his trial (r).

The accused may then, if he wishes, make a statement not on oath. Such statement, if any, must be taken down in writing, signed by the examining justices, and kept with and transmitted in the same manner as the depositions of the witnesses (r).

If the accused is afterwards committed for trial, his statement may, if necessary, be given in evidence against him without further proof, unless it is proved that the justice or justices purporting to sign the statement did not in fact sign it (r).

caption is imperatively required, at any rate, it is sufficient if the caption contains the names of the witnesses and the charge (*R v Langbridge* (1849), 2 Car & Kir 975, 977, Ex Oh). In cases of depositions taken out of court under the Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s 6, a particular form of caption is prescribed (see *R v Prestridge* (1881), 72 L T Jo 93). Everything that is material should be inserted in the depositions, e.g., if the accused during the examination of a witness makes any statement or observation which is material, such statement or observation should be taken down (*R v Weller* (1846), 2 Car & Kir 223, per PLATT, B, at p 224). It would seem that, if anything that was said is omitted from the depositions, and the depositions are regularly taken and it becomes material to inquire at the trial whether the thing in question was or was not said, evidence is not admissible to contradict the deposition (*R v Weller*, *supra*, *R v Christopher* (1850), 1 Den 336, but see *R v Moore* (1869), 20 L T 987, where LUSH, J, after consulting KEATING, J, admitted such evidence). If the depositions are irregularly taken, questions may be asked to contradict such depositions (*R v Christopher*, *supra*). If the depositions are regularly taken, there is a presumption of law that the accused had full opportunity of cross-examining the witnesses whose evidence is taken down, but where the issue was whether a person was sane enough to be tried, BRETT, J, allowed counsel for the prisoner to ask the witness who proved the deposition of a deceased person whether the accused was, when the evidence was taken, in such a state of mind as to be able to understand what was going on (*R v Peacock* (1870), 12 Cox, C O 21). As to depositions taken in a language which it is alleged the accused does not understand, see *R v Jones* (1855), 49 J P 728. It was said before the passing of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), that if a person of weak intellect is examined as a witness before a justice, and questions are put by a justice and answered by the person called as to his competency to take an oath, such questions and answers should be put down on the depositions (*R v Painter* (1846), 2 Car & Kir 319), but the *dictum* has no application, it seems, to the law as it is now (see Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s. 17). On the death or illness of a witness, his deposition, if regularly taken, but not otherwise, may be used as evidence at the trial (see Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s. 17).

(r) Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s. 18. As to transmission of the depositions and of the statement of the accused when he is

**629.** After the accused person has been asked whether he has anything to say in answer to the charge, and, if he says anything, after what he says has been taken down in writing and signed by the examining justices, the justices must ask the accused if he desires to call any witnesses.

The accused person may now himself give evidence, if he wishes, or the wife or husband of the accused may give evidence for him or her on the application of the accused, and may be cross-examined and re-examined (s).

If the accused person is the only witness as to the facts called for the defence, he must give evidence immediately after the close of the evidence for the prosecution (t).

If the accused intends to call witnesses besides himself, his counsel or solicitor, if he has one, may with the permission of the justices address them and open the defence, or may reserve his speech till after the close of the evidence for the defence (a).

The witnesses for the defence, where there are any besides the accused, are called after the opening speech, if any, of the counsel or solicitor for the defence, and may be cross examined and re-examined (b). Their statements are to be taken on oath or

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**Evidence of accused.**

**Witnesses for the defence.**

committed for trial, see p 321, *post*. The statement of the accused is admissible in evidence against him subsequently, if the first caution has been given ("You are not obliged to say anything" etc.), it is not necessary to prove that the second caution ("You have nothing to hope from any promise of favour" etc.) was given (*R v Sansome* (1850), 3 Car & Kir 352, C C R.). Where an accused is cautioned and makes a statement and a remand follows and after the remand his solicitor asks some questions of the witnesses and the accused is again cautioned and declines to make a statement, the first statement can be read in evidence at the trial (*R v Bond* (1850), 3 Car & Kir 337, n). The caution is only needed at the close of the examination of the witnesses for the prosecution, a voluntary statement made by an accused person in the course of the examination and before all the witnesses have been examined is admissible in evidence against him at the trial, although no caution has been previously given (*R v Strupp* (1850), Dears C C 648). The caution is only applicable to accused persons, and has no application to witnesses (*R v Gonte* (1873), L R 4 P C 599). If a prisoner before the justices gives evidence on his own behalf under the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), before the caution is given, the evidence which he gives is admissible against him on his trial (*R v Bird* (1896), 19 Cox, C C 180). As to admissions and confessions made out of court by a defendant, see p 394, *post*.

(s) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1. As to the limits of cross-examination in such a case, see *ibid*, and p 404, *post*.

(t) *Ibid*, s 2. *I.e.*, it seems after the accused has been asked if he has anything to say in answer to the charge (see Criminal Law Amendment Act 1867 (30 & 31 Vict c 35), s 3). In *R v Lord* (1898), 19 Cox, C C 180, the caution was given after the accused had given evidence, *quære* whether the caution should not be given before the accused gives evidence. An accused person may now make a statement, not on oath, in answer to the caution, and he may also make a statement on oath either in addition to or instead of the statement not on oath, or he may decline either to make a statement or to give evidence on oath (see Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (h), which provides that nothing in that Act is to affect the provisions of s 18 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), or any right of the person charged to make a statement without being sworn).

(a) Only one speech on the facts on each side is generally allowed (compare *Dymock v Watkins* (1883), 10 Q. B. D 451, C A.). But there is no express provision on this point in the Indictable Offences Act, 1848 (11 & 12 Vict c 42), as there is in the Summary Jurisdiction Act, 1848 (11 & 12 Vict c 43), s 14.

(b) Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s 3. Under

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affirmation, if they know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused, and are to be put in writing and signed by the witnesses and by the examining justices, and, if the accused is committed for trial, are to be transmitted in due course of law with the depositions for the prosecution (c)

**Decisions of**  
**justices on**  
**questions of**  
**evidence**

**630** The examining justices have jurisdiction to decide all questions relating to the admission or rejection of evidence that is tendered before them. If they exercise this jurisdiction and admit or reject evidence, the King's Bench Division of the High Court of Justice will not interfere to direct the justices as to the course they should pursue, if, however, they have jurisdiction to hear evidence and decline jurisdiction, the King's Bench Division may grant a mandamus to them to hear and determine the question whether the evidence should be admitted (d)

the Indictable Offences Act, 1848 (11 & 12 Vict c 42), there was no provision for securing the attendance or taking the depositions of witnesses for the defence (see *ibid*, s 16), but see opinion of Cockburn, A-G, Douglas, Summary Jurisdiction Procedure, 9th ed, p 346. The provisions of s 16 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), relating to the summoning and enforcing the attendance and committal of witnesses for the prosecution were applied to witnesses for the defence by the Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s 4. As to the depositions of witnesses for the defence, see *ibid*, s 3. As to expenses of witnesses for the defence, see Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), ss 1, 3. Before the passing of the Newspaper Label and Registration Act, 1881 (41 & 42 Vict c 60), it was held that in taking an examination on a charge of maliciously publishing a defamatory libel under the Libel Act, 1843 (6 & 7 Vict c 96), a justice had no jurisdiction to receive evidence of the truth of the libel (*R v Carden* (1879), 5 Q B D 1). This remains the law as regards any charge of libel, except a charge against a proprietor, publisher or editor, or any person responsible for the publication of a newspaper for a libel published therein. When the charge is against such a person, and is in respect of a libel published in a newspaper, the justice or justices may since the passing of the Newspaper Label and Registration Act, 1881 (44 & 45 Vict c 60) receive evidence as to the publication being for the public benefit, and as to the matter charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any other matter which under that or any other Act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment (*ibid*, s 4). As to definition of newspaper, see *ibid*, s 1. See also title LIBEL AND SLANDER.

(c) Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s 3, and see *R v Carden* (1879), 5 Q B D 1. If the accused has witnesses as to the facts, they ought to be called before the examining justices, evidence for the defence which is heard for the first time at the trial is, in the absence of explanation, open to grave suspicion (*R v Humphries* (1903), 67 J P 398, and *Anon* (1870), 48 L T Jo 367, per HANNEN, J, *R v McNair* (1909), 25 T L R 228, C C A). Magistrates ought not to discourage the accused from calling his witnesses (*R v Hendry* (1909), 25 T L R 635, C C A). A defendant cannot get legal aid under the Poor Prisoners Defence Act, 1903 (3 Edw 7, c 38), unless it appears that having regard to the nature of the defence set up by him as disclosed in the evidence given or statement made by him before the committing justices (*ibid*, s 1 (1)), it is desirable that he should have legal aid.

(d) *R v Carden* (1879), 5 Q B D 1, per COCKBURN, O J, at p 5. The decision of the justices on questions of evidence in no way binds the court which afterwards tries the accused, if he is committed for trial. The court may admit evidence which the justices have rejected and reject evidence which they have admitted. If inadmissible evidence has been admitted by the justices and appears on the deposition of any witness, and such deposition is read in evidence at the trial, the part of the deposition which contains the

SUB-SECT. 2.—*Remand*

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Remand.

**631** If from the absence of witnesses or from any other reasonable cause it is necessary or advisable to defer the examination or further examination of the witnesses, the examining justices may by warrant remand the accused in custody from time to time for such time, not exceeding eight days, as the justices may in their discretion think reasonable (c)

If the remand is for a time not exceeding three clear days, the accused may be remanded by a verbal order of the examining justices to the custody of a constable or other person in whose custody the accused may then be, such order directs such constable or any other constable or person named to keep the accused in his custody and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing the examination (c)

If the remand is for a time exceeding three clear days, the examining justices are to make out a warrant remanding the accused to some prison or place of security in the county etc. for which the justices act, the examining justices may order the accused to be brought before him or them, or before any other justice or justices for the same county etc., at any time before the expiration of the time for which the accused is remanded (c)

**632** Instead of detaining the accused in custody during remand, any one justice before whom the accused appears may discharge him upon his entering into a recognisance with or without sureties, at the discretion of the justice, conditioned for his appearance at the time or place appointed for the continuance of the examination. If the accused does not appear at the time and place mentioned in the recognisance, the justice who discharged him on bail, or any other justice then and there present, may certify on the back of the recognisance the non-appearance of the accused and may transmit the recognisance to the clerk of the peace of the county etc. within which the recognisance is taken in order that it may be enforced, and the certificate of such justice is to be deemed sufficient *prima facie* evidence of the non-appearance of the accused (c).

Till during  
remand.

inadmissible evidence may be rejected, but if justices reject evidence which ought to be admitted, and refuse to commit on this ground, there is no way of questioning their decision except by the prosecutor applying for a fresh summons for the same offence or applying to be bound over to prosecute under the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17) if that Act applies, and, if it does not, by preferring an indictment before a grand jury.

(c) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 21, Schedule Form Q 1 (warrant remanding accused), Q 2 (recognisance), Q 3 (notice of recognisance to the accused and his sureties), Q 4 (certificate of non-appearance). As to persons whom it is intended to send to a reformatory school, see Children Act, 1908 (8 Edw. 7, c. 67), s. 63. It is doubtful whether the limit of eight days for a remand applies, when an accused person is on bail, it has been suggested that in such a case an adjournment may take place for a longer period than eight days (see Douglas, Summary Jurisdiction Procedure, 9th ed., p. 367). A justice cannot adjourn the hearing of a summons for libel on the ground that civil proceedings between different parties for a different libel arising out of the same matter are pending (*R. v. Evans* (1890), 62 L. T. 570),

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Decision of  
the justices  
to commit or  
discharge.

SUB-SECT. 3—*Commitment for Trial or Discharge of Accused.*

**633** When all the evidence has been heard, the examining justices then present who have heard all the evidence must decide whether the accused is or is not to be committed for trial (*f*). If the justices are of opinion that a *prima facie* case has not been made out against the accused by evidence entitled to a reasonable degree of credit, they must forthwith order him to be discharged as to the information then under inquiry. If they are of opinion that the evidence is sufficient, or if the evidence raises a strong or probable presumption of his guilt, they must commit him to prison to take his trial or must admit him to bail (*g*).

**Vexatious  
Indictments  
Act, 1859.**

**634** In the case of an offence to which the Vexatious Indictments Act, 1859 (*h*), applies, if the examining justices refuse to commit or admit to bail and the prosecutor desires to prefer an indictment for the offence, the examining justices must take the recognisances of the prosecutor to prosecute the charge, and must transmit the recognisance, information, and depositions (if any) to the court in

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and see title LIBEL AND Slander. It is also doubtful whether in case of the refusal of justices to bail on remand in the case of a misdemeanour an application can be made to the King's Bench Division for bail. It has been decided that the right which a person charged with a misdemeanour has to be bailed by the King's Bench Division does not arise till after committal (see *Ex parte Mullins* (1884), Douglas Summary Jurisdiction Procedure, 9th ed., p. 365, and see *R v Bennett* (1870), 49 L T Jo 387; *R v Atkins* (1870), 49 L T Jo 421). But see *R v Manning* (1888), 5 T L R 139, where on the refusal of a justice to grant bail on remand an application for bail was made to the High Court and the case was remitted to the justice with a direction to admit to bail. In *R v Spilsbury*, [1898] 2 Q B 615, at p. 622, it was said that it is not the usual practice for the King's Bench Division to admit to bail during remand.

(*f*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 25. As to the meaning of the expression 'committed for trial' in every Act passed after the 1st January, 1890, see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 27. If the examination has been begun before one justice sitting alone and he dies or is otherwise incapacitated before all the evidence is heard, another justice must hear the evidence afresh. As to the procedure in such a case, see *Ex parte Bottomley* (1909), 25 T L R 371.

(*g*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 25, Schedule, Form T (1) see *Cox v Coleridge* (1822), 1 B & C 371, *per* BAYLEY, J., at p. 50. The examining justices must, in considering whether the accused should or should not be committed for trial, take into account any evidence that is given for the defence. There may be cases where the evidence for the prosecution is sufficient to justify a commitment, *e.g.*, where it raises a presumption of guilt, as is the case where on a charge of larceny possession of stolen goods soon after a theft is proved against the accused. In such a case the presumption of guilt may be rebutted by the evidence for the defence, *e.g.*, if an accused person found in possession of goods recently stolen gives a satisfactory account of his coming into possession of them, and although the justices have not to try the case, yet, if the evidence for the defence is such in their opinion that there is a strong or probable presumption that the jury would acquit the accused, if he were committed, they should dismiss the charge (*R v Carden* (1879), 5 Q B D 1, *per* COCKBURN, C.J., at p. 6, see as to libel, Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), s. 4, and as to offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 18 of that Act). As to the duty of the justices either to commit or to dismiss, and as to their convicting summarily for a minor offence, see *Re Thompson* (1860), 30 L J (M. C.) 19.

(*h*) 22 & 23 Vict. c. 17, see p. 331, *post*.

which the indictment ought to be preferred, in the same manner as he would have done if he had committed the accused (i).

**635.** The examining justices before whom any witness has been examined on a charge in respect of which the accused may be committed for trial may bind every such witness by recognisance to appear at the court at which the accused is to be tried to give evidence at such court, they may also bind the prosecutor by recognisance to appear at such court and to prosecute, or, if he is a witness, to prosecute and give evidence (k).

**636** The recognisances of the witnesses, together with the written information (if any), the depositions, the statement of the accused, and the recognisances of bail (if any) are to be delivered, or caused to be delivered, by the examining justices to the proper officer of the court in which the trial is to be had, before or at its opening, on the first day of the sitting of the court or at such other time as the judge, recorder, or justice who is to preside in the court at the trial may appoint (l).

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—  
Binding over  
witnesses

Transmitting  
recognisances  
etc.

(i) Vexatious Indictments Act, 1869 (22 & 23 Vict c 17), s 2, see pp 332, 333, *post*

(k) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 20, as to form of recognisance see *ibid*, Schedule, Form O (1). The recognisance is in writing, but is orally acknowledged by the person who enters into it, it must be taken before and signed by a justice or justices. The person who enters into a recognisance acknowledges that he owes a specified sum to the King, to be levied on such person's goods and chattels, if he fails in the condition specified. The condition recites the charge on which the accused has been committed, and is to the effect, in the case of a recognisance by a prosecutor, that if he appears at the court at which the accused is to be tried, and there prefers, or causes to be preferred, and prosecutes duly a bill of indictment for the offence charged, the recognisance is to be void, but otherwise it is to stand in force. If the prosecutor is also to give evidence, the recognisance binds him also to give evidence to the grand jury and the petty jury. Witnesses are bound to give evidence in the same way. The recognisance must specify the profession, trade etc of the person bound over, his christian name and surname, the parish etc where he resides, and, if he resides in a city, town or borough, the name of the street and the number (if any) of the house where he resides, and whether he is owner or tenant of or a lodger in such house (*ibid*, s 20, and Schedule, Form O (1)). Notice of the recognisance signed by the justice or justices is at the same time to be given to the person bound (*ibid*, Schedule, Form O (2)). The usual practice in taking recognisances is for the person who is to be bound to enter orally into the recognisance before the officer of the court who takes a minute of it, the recognisance need not be formally drawn up till afterwards (*Ex parte Jeffreys* (1888), 52 J P 250). The prosecutor is the person who appears before the justices to support the charge, if such person is willing to be bound over, it is irregular to bind over anyone else to prosecute, and the person who appeared as prosecutor before the justices is entitled to the conduct of the subsequent proceedings (*R v Bushell* (1888), 16 Cox, C C 367). The person who is properly bound over to prosecute has the conduct of the subsequent proceedings, and, if he is willing to carry them on, no one else, except, perhaps, the Director of Public Prosecutions, can intervene to take the conduct out of his hands (see *R v Yates* (1857), 7 Cox, C C 361, *R v Ottewill*, *Times*, 24th November, 1891, p 6, *R v Taylor*, *Times*, 2nd November, 1890, p 7).

(l) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 20. The recognisances, depositions etc should be delivered as soon as practicable after the accused has been committed for trial, or at such time as to enable the judge etc. to read and master the contents of the depositions, before he charges the grand jury (see two letters from the Home Office to Justices' Clerks of 29th December, 1886, and 12th May, 1891). If the Director of Public Prosecutions



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Right of  
 accused to  
 have copies  
 of depositions

Committing  
 witness who  
 refuses to be  
 bound over

Commitment  
 of accused to  
 prison

**637.** When the examining justices have decided to commit an accused person for trial or to admit him to bail to take his trial, the accused, at any time after the examination has been completed and before the first day of the assizes or sessions or other first sitting of the court at which the accused is to be tried, is entitled to have copies of the depositions on which he has been committed or bailed from the officer or person having custody of the same on payment of a reasonable sum, not exceeding three-halfpence for each folio of ninety words (*m*)

**638** A witness who refuses to enter into or acknowledge a recognisance to give evidence may by warrant be committed to the common gaol or house of correction for the county etc in which the accused is to be tried, there to be imprisoned until after the trial, unless in the meantime such witness duly enters into such recognisance before a justice of the county etc in which the gaol or house of correction is situate (*n*).

**639** If the examining justices decide to commit an accused person to prison, they must specify by their warrant of commitment the prison to which he is to be committed (*o*) The prison may be

has instituted or is carrying on the proceedings, the recognisances, depositions etc should be delivered to him (Prosecution of Offences Act, 1879 (42 & 43 Vict c 22), s 5)

(*m*) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 27 As to the allowance of costs of the depositions under the Poor Prisoners Defence Act, 1903 (3 Edw 7, c 38), see *Costs in Criminal Cases Act, 1908* (5 Edw 7, c 15), s 1 (3) There is no right to have copies unless the accused has been committed or bailed A person who has been remanded, or a person the charge against whom has been dismissed, has no right to copies (*R v London (Lord Mayor)* (1844), 5 Q B 355) The officer or person having the custody of the depositions is the magistrates' clerk, if the depositions have not been transmitted, and the clerk of the court at which the prisoner is to be tried, when the depositions have been transmitted (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 20)

(*n*) Indictable Offences Act 1848 (11 & 12 Vict c 42), s 20, and Schedule, Form P (1) A person imprisoned under this section is to be treated as an offender in the second division, unless the justice or justices otherwise order (Prison Act, 1898 (61 & 62 Vict c 41), s 6 (4)) There seems no provision for imprisoning a prosecutor who refuses to enter into a recognisance to prosecute The practice is for the witnesses to be bound over after the examining justices have decided to commit the accused for trial or to admit him to bail, but s 20 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), seems to contemplate the possibility of the witnesses being bound over before such decision, as the last part provides that, if a witness has been imprisoned for refusing to enter into a recognisance and the examining justices do not commit the accused or admit him to bail, such justices, or any other justice or justices of the same county etc, may order the keeper of the gaol or house of correction where the witness is in custody to discharge him, and such keeper is thereupon forthwith to discharge him *ibid*, Schedule, Form P (2))

(*o*) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s. 25, Schedule, Form T (1) The warrant, which must specify the date when and the place at which it was issued, is under the hand and seal of a justice, and is directed to the constable of some particular district and to the keeper of the prison to which the accused is committed. It recites the offence with which the accused has been charged, and commands the constable to take the accused and convey him safely to the specified prison together with the warrant, and commands the keeper of the prison to receive the accused into his custody and there safely to keep him until he is delivered thence by due course of law See, too, Prison Act, 1877



either one near to the place where the accused is to be tried (p), or some convenient prison in the county where the accused is to be tried or in any adjoining county, if such prison is appointed by the Secretary of State for the Home Department under any general or special rule for the confinement of prisoners before or during trial (q).

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#### SUB-SECT 4.—Bail.

**640** Instead of committing the accused to prison the examining justices may in all cases except treason admit him to bail to appear at the court at which his trial is to take place (r).

Admitting  
accused to  
bail.

In cases of treason no person can be admitted to bail, except by order of one of the Secretaries of State or by the King's Bench Division of the High Court of Justice or a judge thereof in vacation (s). All other crimes are, as regards bail, divided into two classes by statute (s). One class consists of felonies and certain specified misdemeanours, the other embraces all other misdemeanours (s).

With respect to the first class, the justices have a discretion whether they shall admit to bail or not, but it is not usual to grant bail in cases of murder.

Discretion of  
justices.

As to the second class, it seems that the justices have discretion

(40 & 41 Vict. c 21), s 28, and the County Police Act, 1840 (3 & 4 Vict c 88), s 33.

(p) Prisons Act, 1835 (5 & 6 Will 4, c 38), s 3. See title PRISONS.

(q) Prison Act, 1877 (40 & 41 Vict. c 21), ss 24, 27, 28. For the rules made under this Act, see Statutory Rules and Orders Revised, Vol. X, Prison (England), 68. As to commitment for trial at the Central Criminal Court, see Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict c 64). As to commitment of prisoners in counties of cities or towns corporate within which there is no commission of over and terminer and gaol delivery directed to be executed, see Criminal Justice Administration Act, 1851 (14 & 15 Vict c 36), s 19. As to the expenses of constables in conveying prisoners, see Indictable Offences Act, 1848 (11 & 12 Vict c 42), ss 22, 26, and Schedule, Forms R (2) and T (2).

(r) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 23. If the justices decide to grant bail, they are to take the recognisance of the accused and of his sureties (*ibid*, Schedule, Form S (1), (2)), the condition of such recognisance is that the accused will appear at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave. Sureties may be dispensed with, if in the opinion of the justices this can be done without tending to defeat the ends of justice (Bail Act, 1898 (61 Vict c 7), s 1). The effect of granting bail is not to set the accused free, but to release him from the custody of the law and to intrust him to the custody of his sureties, who are bound to produce him to answer on his trial at a specified time and place (2 Hawk P C c 15, s 3, 138). The sureties may seize their principal at any time (*Anon.* (1704), 6 Mod Rep 231, *ex parte Lyne* (1822), 3 Stark 132, *Foxhall v Barnett* (1855), 23 L. J (Q. B.) 7), and may discharge themselves by handing him over to the custody of the law, and the accused will then be imprisoned, unless he obtains fresh bail. The sureties should be of ability sufficient to answer the sum in which they are bound (2 Hawk P C, c 15, s 4, 139). A contract by the accused or someone else to indemnify a surety against liability under his recognisance is illegal (*Herman v Freuchner* (1885), 15 Q. B. D. 561, C A., *Consolidated Exploration and Finance Co v Musgrave*, [1900] 1 Ch. 37). As to bail during remand, see p. 319, *ante*.

(s) Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s 23.

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**tion before**  
**Justices.**

to grant or refuse bail except in respect of offences relating to the non-repair or obstruction of a highway, public bridge, or navigable river (t) In the case of such offences, which, however, are usually commenced by indictment and do not ordinarily come before justices on a preliminary examination, bail cannot be refused by justices (a).

**Bail after**  
**commitment**

**641** The examining justices fix the amount of bail, the number of sureties, and decide whether the sureties are or are not sufficient (b)

In exercising their discretion with regard to bail the justices have to consider the nature of the offence, the strength of the evidence, the character or behaviour of the accused, and the

(t) *Ibid* The misdemeanours in the first class are — Assault with attempt to commit a felony, attempt to commit a felony, if the attempt is a misdemeanour (see p 259, *ante*), obtaining or attempting to obtain property by false pretences, receiving stolen property, when the theft is a misdemeanour, or receiving property obtained by false pretences (see Larceny Act, 1861 (24 & 25 Vict c 96), s 95), perjury, subornation of perjury, concealing the birth of a child, wilful or indecent exposure of the person, riot, assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, neglect or breach of duty as a peace officer, and any misdemeanour for the prosecution of which the costs may be allowed out of the county rate (Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 23) It is not clear what is the meaning of the words "any misdemeanour for the prosecution of which the costs may be allowed out of the county rate", those words may mean the misdemeanours for the prosecution of which the costs at the time of the passing of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), might have been allowed out of the county rate or they may mean misdemeanours for the prosecution of which the costs may under any statute subsequently passed be so allowed At the time of the passing of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), the only misdemeanours for the prosecution of which costs were allowed out of the county rate were the misdemeanours specified in s 23 of the Criminal Law Act, 1826 (7 Geo 4, c 64), these are the same as those specified in the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 23, with the exception of attempting to obtain property by false pretences and concealment of the birth of a child, which do not appear in s 23 of the Criminal Law Act, 1826 (7 Geo 4, c 64) No misdemeanours are specified in s 23 of the Act of 1826 which are not specified in s 23 of the Indictable Offences Act 1848 (11 & 12 Vict c 42), and therefore the words "which may be allowed out of the county rate" are meaningless, if they refer only to misdemeanours the costs of the prosecution of which might be so allowed at the time of the passing of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), for there were no such misdemeanours not specified in s 23 of that Act It seems, therefore, that the words in question relate to misdemeanours the costs of the prosecution of which may be allowed under any subsequent statute If this is so, the effect of subsequent legislation has been to repeal or make almost meaningless that part of s 23 of the Indictable Offences Act, 1848 (11 & 12 Vict c 42), which gives a right to bail to persons accused of misdemeanours other than those specified in the first part of s 23 By the Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s. 1, the costs in the prosecution of all offences may now be allowed out of the county rate, except offences relating to the non-repair or obstruction of a highway, public bridge, or navigable river (*ibid.*, s 9 (3)) As it is not usual to commence prosecutions for such offences before justices, the effect of the Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), seems to be that in all indictable cases which ordinarily come before justices they have a discretion as to the granting of bail

(a) See Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 1

(b) *R v Saunders* (1847), 2 Cox, C C 249 A justice should not interfere to prevent anyone from becoming bail for another (*ibid*)

seriousness of the punishment which may be awarded if the accused is found guilty (c).

**SMO. 2.**  
**Preliminary**  
**Examina-**  
**tion before**  
**Justices.**

**642** If an accused person is not admitted to bail when he is committed for trial, he may be admitted to bail at any time afterwards before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned (d).

If justices on or after commitment and before trial refuse to grant bail, an application to be admitted to bail may be made to the King's Bench Division of the High Court of Justice or to a judge thereof (e)

**Bail by King's**  
**Bench**  
**Division.**

(c) *R v Scasfe* (1841), 9 Dowl 553, *R v Barronet* (1852), Dears O O 51, *R v. Barthelmy* (1852), Dears O O 60, *Re Robinson* (1854), 23 L J (q b) 286; *R v Rose* (1898), 67 L J (q b) 289, O O R, at p 292. If a justice is satisfied with the pecuniary sufficiency of the sureties offered, he cannot reject them because of their character or political opinions (*R v Radger* (1843), 4 Q B 468). As to refusing bail to accomplices, see *R v Beardmore* (1836), 7 C & P 497, per PAITSON, J, at p 499. It is inexpedient to admit the solicitor for the accused as a surety (*R v Scott Jervis*, *Times*, 20th November, 1876). Excessive bail ought not to be required (Bill of Rights, 1 Will & Mar sess 2, c 2). A justice may be indicted, if he refuses bail from improper motives (*R v Radger* (1843), 4 Q B 468, at p 472), or sued, if he does so maliciously (*Linford v Fitzroy* (1849), 13 Q B 240, at p 247). In deciding questions relating to the granting of bail justices act judicially, and not ministerially (*Linford v Fitzroy*, *supra*).

(d) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 23. Bail may be granted after commitment by the committing justices, or if they are of opinion that the accused ought to be admitted to bail, they are to certify on the back of the warrant of commitment (see Indictable Offences Act, 1848 (11 & 12 Vict c 42), Schedule, Form S (3)) their consent to the granting of bail, and to state the amount of bail which ought to be required, on the production of such certificate any justice attending or being at the prison where the accused is in custody may admit him to bail. If it is inconvenient for the surety or sureties to attend at the prison to join with the accused in the recognisance, the committing justices may make a duplicate of such certificate (Indictable Offences Act, 1848 (11 & 12 Vict c 42), Schedule, Form S (4)), and, on such certificate being produced to any justice for the same county etc., such last-mentioned justice may take the recognisance of such surety or sureties in conformity with the certificate. On such recognisance being transmitted to the keeper of the prison and produced, together with the certificate on the back of the warrant of commitment, to any justice attending or being at the prison, such last-mentioned justice may take the recognisance of the accused and order him to be discharged out of custody. In cases where the accused has a right to be admitted to bail by justices (but see p 324, note (f), *ante*), and he has been committed to prison, on his applying to be bailed to any visiting justice of the prison or to any other justice of the same county etc., before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, such justice must accordingly admit him to bail. In all cases where an accused person in custody has been admitted to bail by a justice other than the committing justice, the justice who admits him to bail must forthwith transmit the recognisance or recognisances of bail to the committing justices or one of them to be transmitted with the depositions to the proper officer (Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s 23). If a justice admits to bail any person in prison charged with the offence for which he is admitted to bail, such justice must send or cause to be lodged with the keeper of the prison a warrant of deliverance (Indictable Offences Act, 1848 (11 & 12 Vict 42), Schedule, Form S (5)), under his hand and seal, requiring the keeper to discharge such person, if he be detained for no other offence, and upon such warrant being delivered to or lodged with the keeper, he is forthwith to obey it (Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s 24).

(e) *R v Spelsbury*, [1898] 2 Q B 615, 1 Chitty, Criminal Law, 1st ed, 98,

SECT. 2  
Preliminary  
Examina-  
tion before  
Justices.

If an application is made for a writ of *habeas corpus* to enable the prisoner to apply to be admitted to bail in the case of a misdemeanour, the King's Bench Division has no discretion, and must grant bail, if there are sufficient sureties offered (*f*).

In cases of felony or treason the King's Bench Division has a discretion (*g*).

SUB-SECT. 3 — *Place of Trial*

Place of trial

**643.** When the examining justices have decided to commit an accused person for trial, they have to determine at what court he is to be tried

The accused person will be tried, according to the nature of the offence with which he is charged, either at the next assizes for the county or county of a city or town or at the next court of quarter sessions for the county or borough or city for which the examining justices act, unless the accused has been brought before the examining justices in respect of an offence committed in another county, in which case he will be tried at the assizes or quarter sessions for the place where the offence was committed (*h*).

If the offence in respect of which the accused has been committed or bailed is one that can only be tried before a court of oyer and terminer or general gaol delivery, he will be tried before such a court

Assizes Relief  
Act, 1889.

**644** If the accused is charged with an offence triable at quarter sessions (*i*), he must be tried at the next practicable court of quarter sessions, unless the justices for special reasons think fit otherwise to direct. He is not to be tried at the assizes, unless the justices or the High Court of Justice so direct (*k*).

Every justice by whom a person is committed to prison for trial for any offence triable at quarter sessions must, by indorsement on the warrant of commitment or other notice in writing, inform the governor of the prison whether the persons bound over to prosecute

*per* DYMAN, C.J., *R v Bennett* (1870), 49 L. T. Jo 387, *R v Atkins* (1870), *id.*, 421. In *R v Butler* (1881) 14 Cox, C.C. 530, the Court of Queen's Bench in Ireland refused to grant bail in the case of a misdemeanour. If the defendant is in custody on a charge of felony or misdemeanour, the application in the first instance must be made before a judge in chambers (Crown Office Rules, 1906, r 111).

(*f*) Habeas Corpus Act 1679 (31 Car 2, c 2), *Re Frost* (1888), 4 T. L. R. 757. It appears from 1 Chitty, Criminal Law, 98, that if the application for bail is made to the court under its common law jurisdiction, no one can claim bail *de jure*, but see *Lanford v Fitzroy* (1849), 13 Q. B. 240, *per* DENMAN, C.J., at p. 246. As to the writ of *habeas corpus*, see title CROWN PRACTICE.

(*g*) It is not usual to bail in cases of felony (1 Chitty, Criminal Law 99). As to bail in cases of murder, see *Mohun's (Lord) Case* (1697), 1 Salk 104, *R v Huronet* (1852), Dears C.C. 51, *R v Bartholemey* (1852), Dears. C.C. 60, and *R v Andrews* (1844), 2 Dow & L. 10, and Short and Mellor's Practice of the Crown Office, 2nd ed., p. 282. As to applications to the High Court for bail, see Crown Office Rules, 1906, r 111, Short and Mellor's Practice of the Crown Office, 2nd ed. p. 254. An appeal from the refusal of a divisional court to grant bail will not lie to the Court of Appeal (*R v Frost* (1883), 10 Q. B. D. 378).

(*h*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss 1, 11, 22, but see Assizes and Quarter Sessions Act, 1908 (8 Edw. 7, c. 41), s 1 (*i*). As to the adjournment of the trial, see p. 358, *post*.

(*i*) See p. 288 *ante*.

(*k*) Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s 1.

and give evidence at the trial are bound over to attend at a court of quarter sessions or at a court of oyer and terminer or general gaol delivery (l).

If a person has been committed to prison charged with an indictable offence, and persons have been bound over to prosecute and give evidence at the next court of quarter sessions for any county or place, and the prisoner is not tried at that court, the next court of oyer and terminer or general gaol delivery having jurisdiction in such county or place must, on his application, unless there are special reasons to the contrary, either cause him to be tried at that court or discharge him from his imprisonment; and if there are such special reasons, they may admit him to bail. If he is not so tried or discharged, and if he is not tried before the holding of the then next subsequent court of oyer and terminer or gaol delivery having jurisdiction in such county or place, that court must try him or discharge him from his imprisonment (m).

SECT. 2.  
Preliminary  
Examina-  
tion before  
Justices.

SUB-SECT. 6—*Deposition of Witness who is Dangerously Ill*

645 If it is proved to the satisfaction of any justice that any person is dangerously ill and in the opinion of some registered medical practitioner is not likely to recover from such illness, and is able and willing to give material information relating to any indictable offence or relating to any person accused of any such offence, and it is not practicable to take the deposition of the witness in the ordinary way, the justice may take in writing the statement on oath or affirmation of the person who is ill, and is to subscribe such statement and add by way of caption a statement of his reason for taking it, and of the day and place when and where it was taken and of the names of the persons (if any) present at the taking of it. Reasonable notice in writing must be served upon the person (whether prosecutor or accused) against whom it may subsequently be proposed to use the statement, and such person or his counsel or solicitor must have, if present, full opportunity of cross-examining the person who makes the statement (n).

Taking of  
deposition  
of witness  
who is ill.

(l) Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 2.

(m) *Ibid.*, s. 3. The "special reasons" may be, *inter alia*, the removal of the indictment into another court or the impossibility of producing the witnesses for the prosecution at the court of quarter sessions (*ibid.*).

(n) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6. See *R v Shurmer* (1886), 17 Q. B. D. 323, C. C. B., *R v Prestridge* (1881), 72 J. T. Jo. 93, *R v Rees*, *Times*, 20th December, 1888, p. 10, *R v Quigley* (1868), 18 L. T. 211. If a notice in writing is not served on the person against whom the evidence is to be used, or if the deposition does not contain a proper caption, the deposition cannot be read in evidence under the Act, but it may be admissible in evidence as a dying declaration, if it satisfies the conditions of such a declaration (*R v Quigley*, *supra*). The Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 7, makes provision for the conveyance of the accused from prison to be present at the taking of the deposition. Such a deposition, if not taken in accordance with the provisions of the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6, but taken in accordance with the provisions of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17 (*R v Katz* (1900), 64 J. P. 807), is only admissible in evidence when the justice who takes the deposition is one of the justices who commit (*R v Rees*, *supra*). And see p. 365, *post*.

**SECT. 2**  
**Preliminary**  
**Examina-**  
**tion before**  
**Justices.**

If the statement of the witness relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, the justice is to transmit the statement, with the caption above referred to, to the proper officer of the court at which the accused is to be tried. In all other cases he is to transmit the statement to the clerk of the peace of the county etc. in which he took it, and such clerk of the peace is required to preserve the statement and file it as of record (o)

**Use of**  
**deposition**  
**at trial.**

**646** On proof that the witness who has made such statement is dead or that there is no reasonable probability that he will ever be able to travel or to give evidence, and that proper notice was served upon the person against whom it is proposed to use the evidence, and that he or his counsel or solicitor had or might have had, if he had chosen to be present, full opportunity of cross-examining the witness, the statement, if it purports to be signed by the justice by or before whom it purports to be taken, may without further proof be read in evidence either for or against the accused (o).

**Taking**  
**deposition**  
**of child**

**647** There are similar powers under the Children Act, 1908 (p), for the taking and using of the deposition of a child in respect of whom an offence under Part II of that Act or under other specified Acts (q) is alleged to have been committed, if a justice is satisfied by the evidence of a registered medical practitioner that the attendance before a court of any such child would involve serious danger to its life or health (r)

**SUB-SECT. 7 — Costs**

**Costs.**

**648** The examining justices may make an order for the payment out of local funds of the costs of the prosecution, or of the defence, or both, incurred in proceedings before them (s)

(o) See note (n), p. 327, *ante*

(p) 8 Edw. 7, c. 67, ss. 28, 29

(q) See note (n), p. 315, *ante*

(r) 8 Edw. 7, c. 67, ss. 28, 29, and see note (n) on p. 315, *ante*

(s) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1. This Act came into force on the 1st January, 1909 (*ibid.*, s. 10 (2)), and repealed the provisions of most of the Acts relating to costs in criminal cases (*ibid.*, s. 10 (1) and schedule). The costs which may be directed to be paid under the Act are such sums as, subject to the regulations of a Secretary of State under the Act (*ibid.*, s. 5), appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and giving of evidence, the amount of the costs is to be ascertained as soon as practicable by the proper officer of the court (*ibid.*, s. 1 (2)). The proper officer in the case of proceedings before examining justices is, it seems, the justices' clerk. As soon as the amount due to any person is ascertained by the proper officer, he is to pay forthwith to such person the amount due for travelling or personal expenses in respect of his attendance to give evidence, and, so far as the amount is not due in respect of attendance to give evidence, is to forward a certificate of the amount in the case of a committal to the proper officer of the court to which the defendant is committed, and in any other

## Part IV.—Indictments.

SECT. 1.—*Preferring an Indictment*

## SECT. 1.

Preferring  
an Indict-  
ment.Proceeding by  
indictment.

**649.** In the trial of crimes which are not summarily dealt with it is now the almost invariable practice to proceed by way of indictment (t) There are alternative modes of proceeding by way of impeachment in the case of some crimes (u), and in case of some misdemeanours by way of information filed in the King's Bench Division of the High Court of Justice, but such modes of proceeding are now rarely used (v)

to the clerk of the peace of the county or place for which the justices act Any amount so paid by the proper officer to any person in respect of his attendance to give evidence is to be reimbursed to that officer by the treasurer of the county or borough out of the funds out of which the same is payable under the Act. The certificate forwarded in the case of a committal is to be laid before the court to which the defendant is committed by the officer of the court, a certificate forwarded in any other case is to be laid before the next court of quarter sessions, in either case the court is to consider the certificate and order the treasurer of the county or borough to pay out of the funds from which the amount is payable the amount certified, or any less amount which the court considers should have been allowed (*ibid*, s 3) In the case of offences committed, or supposed to have been, in a county borough, the costs are payable out of the borough fund or borough rate, and, in the case of other offences, out of the county fund of the administrative county (see title LOCAL GOVERNMENT) in which the offence is committed or supposed to have been committed For the purposes of this provision offences committed within the jurisdiction of the Admiralty (see p 273, *ante*) are to be deemed to have been committed in the place where the offender is prosecuted or tried, or when the offender is tried at the Central Criminal Court in the county of London, but costs paid in the case of these offences out of any county or borough fund are to be repaid out of moneys provided by Parliament (*ibid*, s 4(1)) The Act applies to all indictable offences except those relating to the non-repair or obstruction of any highway, public bridge, or navigable river (*ibid*, ss 1, 9 (3)) but does not affect the operation of any enactment in force providing for the payment of the costs of the prosecution or defence of an indictable offence out of any assets, money or funds, other than local funds, or by any person other than the prosecutor or defendant (*ibid*, s 8) As to costs where a person is committed for trial and not ultimately tried, see *ibid*, s 7, and as to costs where a prosecutor is bound over under the Vexatious Indictments Act, 1859 (22 & 23 Vict c 17), see p 447, *post*, Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (2) As to the meaning of "prosecutor," see *ibid*, s 9 (1), and of "committed for trial," see Interpretation Act, 1889 (52 & 53 Vict c 63), s 27, and p 320, *ante* For the regulations made under s 5 of the Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), see [1908] W N 343

(t) In prosecutions for a corrupt and illegal practice at an election the accused persons may be tried summarily before an election court, or on indictment, the latter is the more usual method (see title ELECTIONS) A person may be punished for contempt of court either summarily or on indictment (see title CONTEMPT OF COURT, Vol VII, p 280) As to other summary proceedings before the High Court, see pp 497, note (g), and 528, *post*.

(u) See p 265, *ante*.

(v) There has been no instance of impeachment since 1806, see p 265, *ante*. There are two kinds of information in criminal cases —(1) An information *ex officio* filed by the King's Attorney-General or (if the office of King's Attorney-General is vacant) by the King's Solicitor-General (*R v Wilkes* (1770), 19 State Tr 1075) for such enormous misdemeanours as tend to disturb or endanger the King's government, or to molest or affront him in the discharge of his royal functions (4 Bl Com. 304). It is filed without any leave of the court Infor-



**SECT. 1.**  
**Preferring**  
**an Indict-**  
**ment.**

**Coroner's**  
**inquisition.**

**650** A person charged by the verdict of a coroner's jury with murder or manslaughter must, if he is in custody, be arraigned on the inquisition before the court of oyer and terminer or gaol delivery to which the inquisition is returned, but the practice in the case of such a verdict is to prefer a bill of indictment for murder or manslaughter before the grand jury, and if the bill is found, to arraign and try the accused on the indictment and on the inquisition together. If no bill is preferred, or if a bill is preferred and

mations have been filed *ex officio* for the following offences — Conspiracy to impair the King's revenue (*R v Starling* (1664), 1 Sid 174), riot (*R v Stroude* (1681), 2 Show 148), imprisoning the governor and subverting the government of Madras (*R v Strutton* (1779), 1 Doug (κ π) 239), disobedience to an Order in Council made under a statute for performing quarantine (*R v Harris* (1791), 4 Term Rep 202), the receipt of bribes by officers of the East India Company (*R v Stevens and Agnew* (1804), 5 East, 244, *R v Douglas* (1846), 13 Q B 42), misbehaviour by the Vice-Chancellor of the University of Oxford in the neglect of his duty both as a vice-chancellor and as a justice of the peace (*R v. Purnell* (1748), 1 Wils 239), breach of duty by a justice of the peace in not suppressing a riot (*R v Pinney* (1832), 3 State Tr (N s) 17), conspiracy to stir up disaffection and to induce tenants not to pay rent (*R v Parnell* (1881), 14 Cox, C C 508), the issue of a fraudulent balance-sheet by the directors of a joint stock bank (*R v Brown* (1858), 7 Cox, C C 442), offences at parliamentary elections, *e g*, undue influence (*R v Duggan* (1873), 7 I R C L 507, 94), obstructing voters and intimidation (*R v Conway* (1858), 7 I C L R at p 519), bribery or advancing money to be used in bribery (*R v Leatham* (1861), 3 E & F 658, *R v Boyes* (1861), 1 B & S 311, *R v Charlesworth* (1861), 1 B & S 460), libels of a public kind, *e g*, blasphemous libels (*R v Eaton* (1812), 31 State Tr 927, *R v Carlisle* (1819), 3 B & Ald 161, *R v Waddington* (1822), 1 B & C 26), obscene libels (*R v Wilkes* (1770), 4 Burr 2327, *R v Curle* (1727), 17 State Tr 153), seditious libels, *e g*, libels on the Sovereign (*R v Clerk* (1728), 1 Barn (κ π) 304, *R v Wilkes* (1770), 4 Burr 2327, *R v Lambert* (1810), 2 Camp 398, *R v Harvey* (1823), 2 B & C 257), libels on the government (*Case of the Seven Bishops* (1688), 12 State Tr 183, *R v Laurence* (1699), 12 Mod Rep 311, *R v Tutchin* (1704), 14 State Tr 1095, *R v Franklin* (1731), 17 State Tr 626, *R v Horne* (1777), 20 State Tr 651, *R v Cobbett* (1904), 29 State Tr 1, *R v Hunt* (1811), 31 State Tr 367, *R v Sutton* (1816), 4 M & S 332, *R v Burdett* (1820), 3 B & Ald 717), libels on the judges and on the administration of the law (*R v Gordon* (Lord George) (1781), 22 State Tr 175, *R v White* (1808), 1 Camp 359, n), libels on the Houses of Parliament (*R v Rayner* (1732), 2 Barn (κ π) 232, *R v Owen* (1752), 18 State Tr 1203), libels on the Constitution (*R v Reeves* (1796), 26 State Tr 529), libels on foreign sovereigns and ambassadors (*R v Peltier* (1803), 28 State Tr 529; *R v Gordon* (Lord George), *supra*, *R v Vint* (1799), 27 State Tr 627, *R v D'Eon* (1764), 1 Wm Bl 510) No information *ex officio* has been filed in England in recent years, the last instance is said to be that of *R v Cate and Tarry* (1887), Archbold's Criminal Pleading, 23rd ed., 143.

(2) An information by the Master of the Crown Office at the instance of a private person. It requires the leave of the court, which is only granted for gross and notorious misdemeanours which do not specially concern the State, but which on account of their magnitude deserve public animadversion (stat. 4 & 5 Will & Mar c 18 ss 1, 5, 4 Bl Com 304, and see *R v Labouchere* (1884), 12 Q. B D 320). Such informations in cases of libels can only be granted at the instance of some persons who are in some public office or position (*R v. Labouchere*, *supra*), and are seldom granted (see *R v Labouchere*, *supra*, and Shortt on Informations, 12). The modern practice is to proceed by way of indictment, all offences for which informations were formerly issued were always also triable by indictment. For recent instances of criminal informations at the instance of justices, see *R. v. Masters* (1889), 6 T. L. R. 44, *R. v. Russell* (1905), 93 L. T. 407.



ignored, it is the practice to arraign the accused formally on the coroner's inquisition before a petty jury and to direct such jury to acquit him. An accused person may be tried before a petty jury on a coroner's inquisition (a), but this course is very rarely adopted.

**SECT. 1.**  
**Preferring**  
**an Indict-**  
**ment.**

**651** At common law any person may prefer a bill of indictment before a grand jury against anyone whom he accuses of committing an indictable crime, and that without any previous inquiry before justices or any leave of any judge or any notice to the person against whom the indictment was presented. This right still exists, except where it has been taken away or restricted by statute, but the usual practice is only to prefer a bill of indictment after laying an information before justices of the peace sitting in petty sessions (y).

Right to  
prefer a bill  
of indictment  
at common  
law.

**652** For offences to which the Vexatious Indictments Act, 1859 (a), applies, except in the cases therein mentioned, no bill of indictment can be presented to or found by a grand jury—(1) unless the prosecutor or other person presenting the indictment has been

Vexatious  
Indictments  
Act, 1859.

(i) See 1 East, P. C. 371, *R v Cole* (1813), 3 Camp 371, *R v Maynard* (1812), Russ & Ry 240, *Re Ward* (1861), 30 L. J. (CH) 776, Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 5 (1). A conviction for murder or manslaughter on a coroner's inquisition without an indictment found by a grand jury is said to be unknown in practice (4 Bl. Com. 301 (16th ed.), note by COLERIDGE, quoted *arg.* in *R v Ingham* (1864), 5 B. & S. 257, at p. 265). But a woman arraigned and tried for the murder of her child on a coroner's inquisition after the grand jury had thrown out the bill has been found guilty of concealment of birth (*R v Maynard, supra*, *R v Cole, supra*).

(y) See p. 290, *ante*. In prosecutions against a bankrupt or any other person for any statutory misdemeanour in cases of bankruptcy a court having jurisdiction in bankruptcy may commit the bankrupt or such other person for trial, and no preliminary inquiry before justices in such a case is required (Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 163, see title BANKRUPTCY AND INSOLVENCY, Vol. II, p. 352). In criminal proceedings against a corporation (see pp. 239, 313, *ante*) and in proceedings by way of indictment 'for the non-repair or obstruction of highways, bridges etc. and for other offences it is not usual to have a preliminary examination before justices, and in such proceedings the presenting of an indictment is the first step.

(a) 22 & 23 Vict. c. 17. These offences are perjury and subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house or a disorderly house, indecent assault (22 & 23 Vict. c. 17, s. 1), misdemeanours under Part II. of the Debtors Act, 1869 (32 & 33 Vict. c. 62), altered by the Bankruptcy Acts 1883 and 1890 (46 & 47 Vict. c. 52, s. 163, 53 & 54 Vict. c. 71, s. 26), see Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 18, and Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 165, libel (Newspaper and Libel Registration Act, 1881 (44 & 45 Vict. c. 60), s. 6), misdemeanours under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 17, and the Children Act, 1908 (8 Edw. 7, c. 67), s. 35, and offences punishable on indictment under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 13. An attempt to obtain property by false pretences is not within the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17) (*R v Burton* (1875), 13 Cox, C. 71, O. C. R.). Giving false evidence before a naval court-martial held under the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), is perjury within the meaning of the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17). See Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 67 of which solves the doubts that were expressed in *R v Heane* (1864), 4 B. & S. 947, as regards a prosecution under the Naval Discipline Act, 1861 (24 & 25 Vict. c. 115), and, it seems, makes the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), applicable to a prosecution for false evidence given out of England at a naval court-martial held under the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109). See also p. 320, *ante*.

**SECT. 1.**  
**Preferring**  
**an Indict-**  
**ment.**

bound by recognisance to prosecute or give evidence against the person accused of the offence; or (2) unless the accused has been committed to or detained in custody, or has been bound by recognisance to appear to answer to an indictment to be preferred against him for such offence, or (8) unless the indictment is preferred by the direction or with the consent in writing of a judge of the High Court of Justice or of the King's Attorney-General or Solicitor-General, or (in the case of an indictment for perjury) by the direction of any court, judge, or public functionary authorised (b) to direct a prosecution for perjury (c)

**Binding**  
**prosecutor**  
**over when**  
**justices refuse**  
**to commit.**

**653.** If on the preliminary hearing before justices for an offence to which the Act applies the justices refuse to commit the accused or to bail him to be tried for such an offence, and the prosecutor desires to prefer an indictment for such an offence, the justices must take the recognisance of the prosecutor to prosecute the charge and transmit the recognisance with the information and depositions to the court in which the indictment ought to be preferred (d),

(b) The persons so authorised are judges of the superior courts, any of the commissioners of assize, nisi prius, oyer and terminer or gaol delivery, any justices of the peace, recorder or deputy recorder, chairman or other judge holding any general or quarter sessions of the peace, any judge or deputy judge of any county court or any court of record, any justice of the peace in special or petty sessions, or any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the superior courts is executed (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 19, see p 496, *post*)

(c) Vexatious Indictments Act, 1859 (22 & 23 Vict c 17), s 1 Justices of the peace for a county have power to act generally throughout the county in the commission of the peace for which their names are placed, and there is nothing in this Act or elsewhere that prevents the justices who ordinarily act in one petty sessional division from committing a person for trial in respect of an act arising in another petty sessional division (*R v Bickley* (1867), 20 Q B D 187, (C C R)) If three persons are bound over to appear and answer an indictment for conspiracy and the Attorney-General gives his fiat for the prosecution of a fourth person and an indictment is subsequently preferred against all four, such an indictment is valid (*Knowlton v R* (1864), 33 L J (M C) 219) If an indictment contains two counts, one relating to the charge to which the commitment relates and a second count relating to another charge, the second count, unless it comes within s 1 of the Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35) (see p 333, note (h) *post*), ought to be quashed, and if it is not quashed and evidence is given relating to the second count which is not admissible as evidence relating to the first count and the accused is convicted, the conviction is bad (*R v Furdge* (1861), Le & C: 390)

(d) Vexatious Indictments Act, 1859 (22 & 23 Vict c 17), s 2 If there is a substantial charge made *bona fide* and it is within the jurisdiction of the justices and the justices dismiss the charge on the ground that there is no evidence to support it, the justices must take the recognisance of the prosecutor, if he offers to be bound (*R v London Corporation* (1880), 16 Cox, C C 77) If the justices refuse to take the recognisance in such a case, a mandamus will lie to compel them to do so (*ibid*) If no indictable offence is disclosed in the information, the justices should not take the recognisance and cannot be compelled to do so (*Ex parte Wason* (1869), L. R. 4 Q. B. 578). If a summons is heard and dismissed and no application is made by the prosecutor to be bound over to prosecute, and the prosecutor lays a second information for the same subject-matter, and the justices refuse to take this information, they are within their right, and they cannot on such a second application be called upon to bind the prosecutor over (*R v. Bather* (1880), 44 J. P. 490). The Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 2 has no application, except when the accused has been charged before justices. If no summons or warrant is issued, no application

## PART IV.—INDICTMENTS.

an indictment may then be preferred in spite of the refusal of the justices to commit the accused for trial (e).

Any count or counts relating to offences to which the Vexatious Indictments Act, 1859 (f), applies may be joined with other counts in an indictment, if apart from that Act they may be lawfully joined (g), and if in the opinion of the court before which the indictment is preferred, such count or counts are founded upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person accused and duly transmitted to such court, and nothing in the Act is to prevent such indictment being found, if it is presented to the grand jury with the consent of such court (h).

**SECT. 1.**  
**Preferring**  
**an Indict-**  
**ment.**

**Adding**  
**counts.**

**654** An indictment is a written accusation presented by a grand jury to a court of oyer and terminer or general gaol delivery or quarter sessions and charging one or more persons with the commission of one or more crimes

**What an**  
**indictment is.**

An indictment lies for any treason, felony, or misdemeanour, **When it lies**

can be made under s 2 (*Ex parte Reid* (1885), 49 J P 609) If a prosecutor is bound over, and does not prefer an indictment to the grand jury of the court at which he is bound over to prosecute, the recognisance lapses and cannot, it seems, be enlarged, and no indictment can be preferred to a subsequent court (*R v Baynes* (1900), 64 J P 217) If the justices refuse to commit and no application is made to them for the binding over of the prosecutor, the direction of a judge of the High Court of Justice or the fiat of the Attorney General or Solicitor-General may be obtained, and an indictment may then be preferred (*R v Rogers* (1902), 46 J P 825) In the case of a prosecution for perjury the direction of a judge etc to prosecute may be given after the lapse of an interval (e.g., a fortnight) after the trial at which the perjury is alleged to have been committed, and no previous summons or notice to the accused or affidavit of the facts is necessary (*R v Bray* (1862), 3 B & S 255, in which a report in the *Times* newspaper of the trial was laid before the judge to refresh his memory, and he wrote on it "I consent to the prosecution in this case," and this was held to be sufficient within the Vexatious Indictments Act, 1859 (22 & 23 Vict c 17))

(e) If an indictment is preferred by a private prosecutor under this section and is found and the person accused is acquitted, the prosecutor may be ordered to pay the whole or any part of the costs incurred in or about the defence (see *Costs in Criminal Cases Act*, 1908 (8 Edw 7, c 15), s 6 (2) For the liability for costs of the Director of Public Prosecutions see *Prosecution of Offences Act*, 1879 (42 & 43 Vict c 22), s 7, and *Stubb's v Director of Public Prosecutions* (1890), 24 Q B D 577)

(f) 22 & 23 Vict c 17.

(g) See *infra*

(h) Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s 1 See *R v Bell* (1871), 12 Cox, O C 37, *R v Brown*, [1895] 1 Q B 119, O C R If it is sought to add a count in respect of a fresh charge the facts of which never were before the justices or were before them and abandoned, the consent of the court is not a mere formality or a matter of course, and if it is obtained without the knowledge of facts that ought to have been brought before the court (e.g., that the fresh charge was before the justices and was withdrawn), it is invalid, and a conviction obtained after such consent is given and such counts added is liable to be set aside (*R v Bradlaugh* (1883), 16 Cox, O C 217) If counts are added containing matter which does not appear on the depositions, such counts if added without leave should be quashed (*R v Crabbe*, (1895) 59 J P 247) Even if the counts which are added do consist of matter appearing on the depositions, yet if they are embarrassing, evidence will not be allowed in regard to such charge (*R v Harris* (1900), 64 J P 380). See also p 412, *post*.

**SECT. 1.**  
**Preferring**  
**an Indict-**  
**ment.**

except in the case of those offences over which courts of summary jurisdiction have exclusive jurisdiction (i)

**SECT. 2—Form of Indictments**

**SUB-SECT. 1.—Necessary Contents of Indictment.**

**Form.**

**655** In form an indictment is a presentment by a grand jury that one or more persons named or otherwise identified have committed one or more crimes for which an indictment lies, and it must contain specific allegations that the person or persons accused have committed the particular crime or crimes charged

**Counts**

It may contain only one "count," or paragraph, or a number of counts, but if it contains more than one count, each count must aver the commission of a distinct and separate crime by the person accused, and each count must be of itself independent and complete (h)

**Result of**  
**presentment**  
**of indictment**

The result of the presentment of an indictment which is sufficient in law is that the person or persons accused, if and when they are in custody, are called upon to plead to the indictment, that is, to say whether they are guilty or not guilty of the crime or crimes alleged. No person can be called upon to plead to an indictment which is not sufficient in law (l)

**What an**  
**indictment**  
**must contain**

**656** In order to be sufficient in law an indictment (1) must contain at the beginning a marginal note which describes the venue or the area of jurisdiction of the court to which the indictment is presented (m), (2) it must commence with an allegation that it is presented on oath by a grand jury (n), (3) it must proceed to aver that the person or persons accused have committed the particular crime or crimes alleged, and it must set out all the ingredients of the offence charged, the facts, circumstances, and intent which constitute the crime, and must do this with certainty and without repugnancy or duplicity (o)

(i) As to these offences, see title **MAGISTRATES**. The offences for which an indictment lies are set out in Parts X to XIII, pp 450 *et seq.*, *post*, and see p 271, *ante*

(k) See *R v Waters* (1848), 1 Den 356. As to the cases in which separate crimes can be alleged in one indictment or in one count, see p 342, *post*

(l) As to the amendment of indictments, see p 344, *post*

(m) *E.g.*, the note is usually in this form, 

|                |   |  |
|----------------|---|--|
| Worcestershire | } | in the case of an indictment found by a grand jury of a county at the quarter sessions or assizes, or Borough of Wolverhampton |
| to wit         |   |  |

  
 } in the case of an indictment found by a grand jury of a borough at the borough quarter sessions (see p 267, *ante*, and Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 23). Want of a proper or perfect venue does not now vitiate an indictment (Criminal Procedure Act, 1851 (14 & 15 Vict c. 100) s 23). As to venue, see p 279, *ante*

(n) The beginning of an indictment is in this form, "The jurors for our lord the King upon their oaths present that." The words "for our lord the King" are not essential (see *R v Turner* (1839), 2 Mood. & R 214, *Broome v R* (1848), 12 Q. B. 834, Ex Ch). If there are more counts than one, each count after the first begins "And the jurors aforesaid upon their oath aforesaid do further present that" etc

(o) See 2 Hawk P. C., c 25, ss 54 *et seq.*, Archbold, Criminal Pleading, 23rd

**NOTE 2.**  
**Form of**  
**Indict**  
**ments.**

Person  
indicted

**657.** The indictment must aver with certainty who is the person indicted. It should set out his christian name and surname, but it is sufficient to give the name by which he is usually known, and if he is known by two names, both may be given (*p*). It is not necessary to give either the "addition" (*i.e.*, occupation) or the place of abode of the person accused (*q*).

If a corporation is indicted, its proper corporate name must be given (*r*).

The inhabitants of a parish who are indicted for non-repair of a highway or of a county for non-repair of a bridge may be indicted under the name of the inhabitants of the particular parish or of the particular county (*s*).

If the name of the person accused is unknown, he must be identified in some way, *e.g.*, by describing him as "a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prison." It is not sufficient to describe such a person as one whose name is to the jurors unknown (*t*).

**658** If the alleged crime is one that has been committed against the person or property of some one, the name and surname of the person injured should be stated with reasonable certainty (*a*).

Person  
injured

ed, 55. No indictment is insufficient for want of any matter unnecessary to be proved, or for the omission of such formal expressions as "as appears by the record," or "with force and arms," or "against the peace," or for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or *vice versa*, or because a person mentioned in an indictment is designated by a name of office or other descriptive appellation instead of his proper name, or for omitting to state the time at which an offence was committed, in a case when time is not of the essence, or for stating the time imperfectly, or for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, or for want of a proper or perfect venue or of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant, or for the want of the statement of the value or price of any matter, or the amount of damage, injury, or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offence (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 24).

(*p*) 2 Hale, P O 175, see Bro Abr tit Misnomer, 47. But an error in the name or surname, or in both, may be amended (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 1).

(*q*) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 24. Statute Law Revision Act, 1883 (46 & 47 Vict c 40), s 4, repealing the Statute of Additions (1 Hen 5, c 5).

(*r*) An error in the name may be amended (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 1).

(*s*) 2 Roll Abr Indictment (L) 79, 2 Hawk P O, c 25, s 68.

(*t*) *Anon* (1822), Russ & Ry 489. It seems that the provisions of s 24 of the Criminal Procedure Act, 1851 (14 & 15 Vict c 100), allowing the designation of any person mentioned in an indictment "by a name of office or other descriptive appellation" do not apply to the case of a person indicted, and that a person indicted cannot be so designated, see *R v Great Western Rail Co (Directors)* (1888), 20 Q B D 410. If the name of the person indicted is misdescribed, the mistake may be amended, but only by the court that tries the indictment (*R v Great Western Rail Co (Directors)*, *supra*).

(*a*) 2 Hawk. P. C., c 25, ss 71, 72, *R v Cardigan (Earl)* (1841), 4 State Tr. (N S) 601, H L. The name given should be either the real name of the person injured, or that by which he is known (*R v Norton* (1823), Russ. & Ry

## SECT. 2.

Form of  
Indict-  
ments

Allegation of  
ownership of  
property

If the name of the person injured is unknown, he may be described as "a person to the jurors aforesaid unknown" (b).

In respect of offences against property it is as a general rule essential that the indictment should allege who is the owner of the property, and that the property belongs to someone other than the defendant (c).

A mistake in the description of the owner of property may be amended, but, if it is not amended, or if the averment of ownership is omitted altogether in a case when it is essential, the indictment is bad. If the owner of the property is unknown, the indictment should describe the property as belonging to a person to the jurors unknown (d).

When neces-  
sary to state  
age.

**659.** A statement of the age of the person accused or of the person injured is unnecessary (e), except where it is an essential ingredient of the particular offence that the person committing the offence or the person injured should be of any particular age (f), in such case the indictment and every count thereof must state that the person is of that age (g).

Time.

**660** It is usual to insert the date on which the crime charged is alleged to have been committed, but it is only necessary to do so where time is of the essence of the offence (h). In such case, the

510, *R v Barriman* (1833) 5 C. & P. 601, *Anon* (1834), 6 C. & P. 408, *R v Williams* (1836), 7 C. & P. 298, *R v Gregory* (1846), 8 Q. B. 508. As to description of the name of a bastard, see *R v Clark* (1818), Russ & Ry 358, *R v Waters* (1835) 1 Mood C. C. 457, *R v Evans* (1839), 8 C. & P. 765, *R v Stroud* (1842), 2 Mood C. C. 270, *R v Scarborough* (1848), 3 Cox, C. C. 72, *R v Smith* (1853), 1 Mood C. C. 402. As to description where parent and child have the same name, see *R v Paine* (1820), 3 B. & Ald. 579. If the person injured has a name of dignity (e.g., if he is a peer or baronet or knight) the name of dignity should be given (see *R v Pitts* (1839), 8 C. & P. 771, *R v. Graham* (1791), 2 Leach, 517, *R v Brinklett* (1828), 3 C. & P. 416, *Anon* (1698), 2 Salk. 401, *R v Gregory* (1846), 8 Q. B. 508, *R v Frost* (1855), Dears C. C. 474). A person may be designated by a name of office or other descriptive appellation instead of by his proper name (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24). A mistake in the name or description of any person named or described in an indictment may be amended by the court that tries the indictment (*ibid.*, s. 1).

(b) *R v Diss* (1839), 2 Mood C. C. 93, *R v Hicks* (1840), 2 Mood & R. 302, *R v Campbell* (1843), 1 Car. & Kn. 82.

(c) 2 Hawk. P. C. c. 25 s. 71. But in an indictment for stealing a will it is not necessary to allege that the will is the property of any person (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 29). In an indictment for arson under ss. 2 and 3 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), it is unnecessary to aver to whom the house etc. belongs (*R v Neuboult* (1872), L. R. 1 C. C. R. 344), and see under the specific offences, *post*.

(d) It is chiefly in regard to indictments for larceny that questions have arisen with regard to the proper description of the owner of property (see p. 645, *post*).

(e) It is not necessary to allege that the person accused is above the age of seven years, for although no person under that age can be convicted of a crime, yet the fact that a person is over that age is not an essential ingredient of any particular offence, but is a condition of liability common to all crimes (see p. 239, *ante*).

(f) See Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 2, 4, 5, 6 Children Act, 1908 (8 Edw. 7, c. 67), ss. 12, 16, 17.

(g) *R v Martin* (1840), 9 C. & P. 215, *R v. Waters* (1848), 1 Den. 356.

(h) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24. Time is of the

day of the month or year, and sometimes the time or day, when the alleged offence was committed must be alleged (i)

SECT. 2.  
Form of  
Indict-  
ments.

Place.

**661** It is not necessary to state the place where an offence is alleged to have been committed except in the case of crimes in respect of which a local description is required (h), but it is usual to do so in order that the taxing officer may see upon what county or borough treasurer the order for payment of the costs should be made.

**662** The facts, circumstances, and intent which constitute the alleged offence must be set out with such certainty that the defendant may be able to judge whether they constitute an indictable offence or not, and to decide whether to plead to the indictment or to move to quash it, and that he may know what the particular charge against him is and whether he has been previously convicted or acquitted of the same charge, and that he may

Facts and  
intent

essence of the offence—(1) when an act is only criminal if done after or within a certain time after some other act or event, e.g., some of the offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), Part II, s. 11 (see title BANKRUPTCY, Vol. II, p. 345), (2) when it is an essential ingredient of a particular offence that certain consequences should follow a particular act—e.g., in murder and manslaughter it is essential to prove that the death of the person alleged to be murdered or killed took place within a year and a day from the time when the act which caused the death was committed (in such a case the time stated in the indictment should be the day on which such act was done), (3) when it is an essential ingredient of a particular offence that the alleged act or acts should be committed between certain hours of the day, e.g., burglary, night poaching, making signals to smuggling vessels, (4) when the prosecution for a particular crime must be commenced within a certain time of the commission of the alleged criminal act (see p. 294, *ante*).

(i) In an indictment for burglary it is sufficient to allege that the act was committed "in the night" (1 Hale, P. C. 549, 2 Haw. P. C. c. 25, ss. 76, 77, but see *R. v. Waddington* (1771), 2 East, P. C. 513), or even that the offence was committed "burglariously" (*R. v. Thompson* (1817), 2 Cox, C. C. 377). So in an indictment for night poaching it is sufficient to allege that the offence was committed by night without mentioning the hour (*Davies v. R.* (1829), 10 B. & C. 84). As to the averment of time in an indictment for an offence for the prosecution of which a time is limited, see *R. v. Brown* (1828), 1 Mood. & M. 103. As to indictments for larceny or embezzlement where several distinct acts, not exceeding three, against the same person may be joined together in one indictment, if committed within six months from the first to the last of these acts, see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 5, 6, 71, *R. v. Nicholas* (1904), 64 J. P. 452, C. C. R., *R. v. Lonsdale* (1864), 4 F. & F. 56, and p. 648, *post*.

(h) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 23. Local description is required in indictments for keeping a disorderly house (see p. 541, *post*), burglary (*R. v. St. John* (1839), 9 O. & P. 40), housebreaking (*R. v. Bullock* (1831), 1 Mood. C. C. 324, n.), sacrilege, stealing in a dwelling-house (*R. v. Napper* (1824), 1 Mood. C. C. 44), hunting or stealing deer, night poaching (*R. v. Ridley* (1823), Russ. & Ry. 515), riotous demolition of houses etc. (*R. v. Richards* (1832), 1 Mood. & R. 177), malicious injury to sea banks etc., maliciously firing a dwelling house (*R. v. Woodward* (1831), 1 Mood. C. C. 323), forcible entry (*R. v. Cranage* (1712), 1 Salk. 385), nuisances to highways (*R. v. Sleeceton (Inhabitants)* (1643), 1 Car. & Kir. 55), see Archbold, Criminal Pleading, 23rd ed., 68, where it is stated that the practice at the Central Criminal Court is to insert the parish in all indictments (see *R. v. Connop* (1836), 4 Ad. & Ell. 942, and Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 4).



**SECT. 2.**  
**Form of**  
**Indict**  
**ments**

be able to prepare a defence to meet it, and that the court may know what judgment to pronounce in case of conviction (*l*)

Where an indictment is in general terms, the court may order the prosecution to deliver to the accused particulars of the matters alleged in the indictment (*m*)

An indictment for a statutory offence must allege with certainty that the defendant committed or omitted the acts the commission or omission of which is prohibited by statute, and did so in the circumstances and with the intent mentioned in the statute (*n*)

**Negating**  
**exemptions**

If a statute which creates or defines an offence contains in the enacting clause an exception exempting certain cases from its operation, an indictment for the offence must aver that the particular act or acts alleged were not within the exemption, but if the exception comes in by way of proviso, whether in the same section or in another part of the statute, and the proviso is not in the nature of an exception which is incorporated directly or by reference with the enacting clause, it is not necessary to negative the proviso (*n*).

(*l*) See Co Litt 303 a, *R v Horne* (1777), Cowp 672, *R v Rowed* (1842), 3 Q B 180, *White v R* (1876), 13 Cox, C O 318, *Taylor v R*, [1895] 1 Q B 25, *R v Aspinall* (1876), 2 Q B D 48, C A, at p 56, *R v Stroulger* (1886), 17 Q B D 327, C O R. The degree of particularity required varies with the nature of the offence (see under specific crimes, *post*). In an indictment for treason the overt acts must be set out (see p 436, *post*). In an indictment for embezzlement the sums or property embezzled must be particularly described. In an indictment for obtaining property by false pretences the property obtained must be particularly described and the false pretences must be set out (see p 690, *post*), but in an indictment under the Larceny Act, 1861 (24 & 25 Vict c 96), s 95, for receiving goods knowing them to have been obtained by false pretences or under the Debtors Act, 1869 (32 & 33 Vict c 62), s 13 (1), for obtaining credit under false pretences the false pretences need not be set out (*Taylor v R*, [1895] 1 Q B 25, *R v Watkinson* (1872), 12 Cox, C O 271, C O R, *R v Pierce* (1887), 16 Cox, C O 213, C O R). In some cases the alleged offence may be described in general terms, e.g., a person may be indicted for barratry, and for keeping a common gaming-house or bawdy-house (*Pinson v Stuart* (1787), 1 Term Rep 748, at p 752) or for conspiracy to defraud a person of "divers goods" (*Anon* (1819), 1 Chit 698, *R v Gill* (1816), 2 B & Ald 204). An indictment which alleges that the defendant conspired "with divers other persons" must either allege that such persons are unknown or must give their names (*R v Perrin* (1908), 72 J P 144).

(*m*) Particulars have been ordered in the case of the following offences: barratry (*Pinson v Stuart*, *supra*, at p 764), nuisance (*R v Curwood* (1835), 3 Ad & El 81), obstructing a highway (*R v Downshire (Marquis)* (1835), cited 3 Ad & El 816), embezzlement (*R v Hodgson* (1828), 3 C & P 422, *R v Bootyman* (1832), 5 C & P 300), conspiracy (*R v Hamilton* (1836), 7 C & P 448, *R v Hycroft* (1852), 6 Cox, C O 76, *R v Probert* (1852), Dears C O 30, at p 32, n, *R v Stapylton* (1857), 8 Cox, C O 69).

(*n*) But see *R v James*, [1902] 1 K B 541, C O R, where it was held that in an indictment against a wife for stealing the goods of her husband it was not necessary to aver that the defendant was the wife of the prosecutor or that she took the goods which were the subject-matter of the charge when leaving or deserting or about to leave or desert her husband, although the statute (Married Women's Property Act, 1882 (45 & 46 Vict c 75), ss 12, 16) only makes the taking of such goods an offence by the wife when she is leaving etc her husband. An indictment for the misdemeanour of receiving goods stolen by a wife from her husband need not allege that the goods were stolen by the wife from her husband, it is enough to allege that they were stolen (*R v Payne*, [1908] 1 K B 97, C O R. As to negating exemptions, see *R v Earnshaw* (1812), 15 East, 456, *R v Jarvis* (1757), 1 East, 643, n, 646, n, *R v Hall* (1786), 1 Term Rep 320, *R v Pratten* (1796), 6 Term Rep 559, *R v Baxter*



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**ments.**

Where any particular intent is a necessary ingredient of an offence, the intent must be stated in the indictment (*o*)

Where words, written or spoken, are of the essence of an offence, they must be set out verbatim in the indictment, except in the case of an obscene libel (*p*)

Property which is the subject-matter of an alleged offence must be described in an indictment by the appropriate name (*q*)

Describing  
property.

It is not necessary to state the value of any matter or thing mentioned in an indictment or the amount of damage, injury, or spoil, except where such value is of the essence of the offence (*r*).

(1792), 5 Term Rep 83, *R v Matters* (1818), 1 B & Ald 362, *R v Pearce* (1810), Russ & Ry 174, *R v Robinson* (1817), Russ & Ry 321, *R v Palmer* (1773), 1 Leach, 102, *R v James*, [1902] 1 K B 540, O C R., *R v Audley*, [1907] 1 K B 381, C C R.) If a statute makes the doing of an act "without lawful authority or excuse" criminal, it is sufficient to aver that it was done without lawful authority (*R v Hurley* (1871), L R 1 O O R 284)

(*o*) *E g*, in an indictment for forgery or for obtaining property by false pretences it must be alleged that the defendant did the act charged with intent to defraud (see *R v James* (1871), 12 Cox, C C 127), so in an indictment for setting fire to houses etc under the Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 3, an intent to defraud or injure, as the case may be, must be alleged, but in none of these cases is it necessary to allege an intent to defraud or injure any particular person (see Larceny Act, 1861 (24 & 25 Vict c 96), s 88 (false pretences), Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 60 (setting fire to houses etc), as to forgery, see Forgery Act, 1861 (24 & 25 Vict c 98), s 44 (forgery)) In an indictment for burglary it is necessary to allege either an entry with intent to commit a felony (see Larceny Act, 1861 (24 & 25 Vict c 96), s 51), *e g*, "with intent the goods and chattels of one John Smith in the said dwelling-house there being feloniously and burglariously to steal, take and carry away", or the commission of a felony in a dwelling house and the breaking out of the house in the night, so as to breaking and entering a house with intent to commit a felony therein (see Larceny Act, 1861 (24 & 25 Vict. c 96), s 57), or being found by night in any dwelling-house with intent to commit any felony therein, or being found by night armed etc., with the intent to break into a dwelling house etc (see Larceny Act, 1861 (24 & 25 Vict c 96), s 58)

(*p*) See Law of Libel Amendment Act, 1888 (51 & 52 Vict c 64), s 7, and see p 538, *post*)

(*q*) Great particularity and minuteness of statement as to the description of personal chattels in an indictment were formerly required (see *R v Cook* (1771), 2 East, P C 616 *R v Edwards* (1823), Russ. & Ry 497, *R v Halloway* (1823), 1 O & P 127, *R v Loom* (1827), 1 Mood C C 160, *R v Puddfoot* (1829), 1 Mood C C 247, *R v Birket* (1830), 4 O & P 216, *R v Tate* (1833), 1 Law C C 234, *R v Cox* (1844), 1 Car & Kir 494, *R v Lonsdale* (1864), 4 F & F 56) But nearly all these cases were before the Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 1, which gave power to amend a misdescription of property, and their importance has been diminished by that Act Moreover, it is doubtful whether these older cases would be followed now, even if there were no amendment (see *R v Stride and Millard*, [1908] 1 K B 617) But a substantial misdescription of property, where a description is essential, will even now, unless amended, make an indictment bad (see *R v Satchwell* (1872), L R 2 C C R 21, where a conviction was quashed because in an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 17, for setting fire to a stack of corn the evidence showed that what the defendant set fire to was a quantity of straw on a lorry). Thus an indictment for larceny of wild animals or of the produce of wild animals must expressly or by implication allege that such animals or produce have been reduced into possession (see *R v Stride and Millard*, *supra*), and the mere allegation that the animals etc. are the goods and chattels of the prosecutor is not a sufficient allegation of such reduction into possession (*R v Stride and Millard*, *supra*, see *R v Rough* (1779), 2 East, P C 607)

(*r*) Criminal Procedure Act, 1851 (14 & 15 Vict. c 100), s 24, *e g*, under

## SECT. 2

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ments

Allegation  
must be  
positive.

**663** All the material allegations in an indictment must be positive and direct and free from duplicity and repugnancy (*s*). Thus, an indictment must not charge a defendant with one or other of two offences or with acting in one or other of two capacities, and must not be capable of being construed as applying to two different offences without stating which one is charged (*t*). An indictment must not be double, *i.e.*, no single count must charge the defendant with two or more offences (*u*). But in respect of one transaction a defendant may be charged with committing several offences, *e.g.*, with uttering a number of forged instruments, if they were all uttered at the same time (*x*). But the omission to aver

s 60 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), under ss 20, 21, 22, 51 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), and under s 11 (4), (5) of the Debtors Act, 1869 (32 & 33 Vict. c. 62) see specific offences, *post*. Where a written instrument is the subject-matter of the alleged offence, it is sufficient to describe such instrument by any name or designation by which it may be usually known, or by the purport thereof, without setting out any copy or facsimile or any part thereof (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss 5, 7, Forgery Act, 1861 (24 & 25 Vict. 98), ss 42, 43). It is sufficient to describe money or a bank note as money, without specifying the particular coin or bank note (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s 18, and see *R v West* (1856), Dears & B 109, *R v Gumble* (1872), L R 2 C C R 1). And see as to an indictment for the embezzlement of money, Larceny Act, 1861 (24 & 25 Vict. c. 96), s 71, *R v Keena* (1868), L R 1 C C R 113, and p 650, *post*.

It seems doubtful whether Arabic figures to express numbers are allowable in an indictment, the older authorities state that numbers must be expressed in words or Roman numerals (see 2 Hale, P C 170, *R v Haddock* (1737), And. 137, *R v Phelps* (1720), 1 Stra 281), but the use of Arabic figures is not now unusual, and is at the most a formal defect which is amendable and of which advantage cannot be taken after plea (see *R v Price* (1900), 17 T L R 80, *R v Edwards* (1901), Archbold, Criminal Pleading, 23rd ed., 82).

(*s*) The older cases lay down that an indictment must state positively that the defendant did the act or acts which constitute the crime, and that acts must not be stated by way of recital or by implication (2 Hawk P C, c 25, s 60; *R v Hitchhead* (1693), 1 Salk 571, *R v Goddard* (1703), 3 Salk 171, *R v Crouchurst* (1724), 2 Ld Raym 1363, *R v Askman* (1711), 1 Sess. Cas. (K. B.) 159). Facts which are adjuncts of the material facts may be stated by implication (see *R v Johnson* (1621), 2 Roll Rep 225, *R v Boyall* (1759), 2 Burr 832, *R v Bortie* (1759), 2 Burr 864, *R v Higginson* (1760), 2 Burr 1232, *R v Somerton* (1827), 7 B & C 163, *R v Long* (1804), 5 Co Rep 120 a, 121 b, *R v Lawley* (1731), 2 Stra 904, *R v Aylett* (1785), 1 Term Rep 63, 70, *R v Ryland* (1867), L R 1 C C R 99). A failure to comply with the rule against statements by way of recital or implication would probably be now considered a mere formal amendable defect of which advantage could not be taken after plea.

(*t*) *Smith v Mall* (1622), 2 Roll Rep 263, *R v Stocker* (1695), 1 Salk 342, 371, *R v Sloughton* (1731), 2 Stra 900, *R v Flint* (1736), Leo temp Hard. 370, *R v Morley* (1827), 1 Y & J 221, *R v Marshall* (1827), 1 Mood. C O 158; *R v Edmondson* (1895), 59 J P 776.

(*u*) *R v Devett* (1838), 8 C & P 639.

(*x*) *R v Thomas* (1800), 2 East, P C 934, with robbing two persons at the same time (*R v Giddens* (1842), Car & M 684), beating two persons at the same time, libelling two persons in one publication (*R v Benfield* (1793), 2 Burr 980, 983, 984); and one endeavouring to procure the commission of two offences (*R v Fuller* (1797), 1 Bos. & P 180). In burglary a person may be charged in the same count with breaking and entering a house with intent to commit a felony and with committing the felony, so a person may be charged in the same count with assaulting and also with unlawful carnal knowledge of a girl (*R. v.*

a matter not necessary to be proved or a defect or mistake in the manner of stating any such matter does not make an indictment bad (a)

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ments.

Use of special  
words.

**664** In indictments for certain crimes the use of certain words is essential, e.g., an indictment for treason must aver that the alleged acts were done "traitorously", for murder, that the defendant "feloniously and of his malice aforethought did kill and murder" etc., for manslaughter, that the defendant "feloniously did kill and slay"; for rape, that the defendant "feloniously did ravish"; for larceny, that the defendant "feloniously did take and carry away", for burglary, that the defendant "feloniously and burglariously did break and enter" etc "with intent to" (commit some named felony), in a statutory forgery, that the defendant "feloniously did forge" etc "with intent to defraud." Every indictment for a felony must aver that the alleged act or acts was or were done feloniously, and if the word "feloniously" is omitted, the indictment, it seems, is bad (b), and every indictment for a misdemeanour must aver that the alleged act or acts was or were done "unlawfully." An indictment for a misdemeanour which contains the word "feloniously" is, it seems, bad (c)

*Guthrie* (1870), L. R. 1 C. C. R. 241) A defendant may be charged in the same count with publishing a libel and causing it to be published (*R. v. Bradlough* (1883), 15 Cox, C. C. 217) Several overt acts of treason may be laid in one count (*Kel* 8) A defendant may be charged with "destroying, defacing and injuring" a register (*R. v. Bowen* (1844), 1 Den. 22) A count charging a defendant with "having used violence to or intimidated" is bad (*R. v. Edmonds* (1895), 59 J. P. 776) Separate acts of larceny or embezzlement against the same person may, if committed within six months from the first to the last of such acts, be joined together in one count (*R. v. Nicholls* (1901), 68 J. P. 452, C. C. R.), but the better course is to charge them in different counts (see *R. v. Balls* (1871), L. R. 1 C. C. R. 328, *R. v. Rye* (1909), 2 Cr. App. Rep. 155) If one material part of an indictment is repugnant to or inconsistent with another material part the whole is void (*R. v. Carter* (1800), 2 East, P. O. 985, *R. v. Gill* (1821), Russ. & Ry. 431, *R. v. Stevens and Agnew* (1804) 5 East, 244, *R. v. Craddock* (1850), 2 Den. 31)

(a) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24 In an indictment against a person who has claimed to be tried by a jury under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17, it is not necessary to aver that the claim was made (*R. v. Chambers* (1896), 18 Cox, C. C. 401) Every fact and circumstance in an indictment which is not a necessary ingredient in the offence charged may be treated as surplusage and need not be proved, and any mistake in stating such matter is immaterial (*R. v. Jones* (1831), 2 B. & Ad. 611, *R. v. Holt* (1793), 2 Leach 593, *R. v. Radley* (1849), 1 Den. 450, *Ryalls v. R.* (1848), 11 Q. B. 781, Ex. Ch., *R. v. Godfrey* (1858), Dougl. & B. 426, *R. v. Huntley* (1860), Bell, C. C. 238, *R. v. Hodgkiss* (1869) L. R. 1 C. C. R. 212, *A.-G. of New South Wales v. Macpherson* (1870), L. R. 3 P. O. 268, *R. v. Parker* (1870), L. R. 1 C. C. R. 225) The words usually inserted at the close of an indictment "against the peace of our sovereign lord the King" or "against the forms of the statute (or statutes) in such case made and provided" are surplusage, and their omission will not make an indictment bad (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24, *Castro v. R.* (1881), 6 App. Cas. 229) So as to the words "for our sovereign lord the King" at the beginning of an indictment after "The jurors" (*R. v. Turner* (1839), 2 Mood & R. 211)

(b) *R. v. Crighton* (1803), Russ. & Ry. 62.

(c) *R. v. Walker* (1834), 6 O. & P. 657, but see *R. v. Carradice* (1811), Russ. & Ry. 205 Matter of inducement or introductory matter in an indictment does not need to be stated with the same certainty as matter which is of the essence of the offence (*R. v. Wright* (1871), 1 Vent. 169, *R. v. Bidwell* (1847), 1 Den.

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**ments**

If more persons than one join together in the commission of an offence, they may be indicted for it jointly in one indictment or separately in separate indictments (*d*)

Joinder of  
several  
defendants  
Joinder of  
several  
offences

**SUB SECT. 2—Joinder of Offences**

**665** An indictment may contain one or more counts, and except where one of the counts alleges a previous conviction of the defendant, or where the prosecutor is put to his election on which count he will proceed, the defendant may be arraigned and evidence may be given on all the counts at the same trial, but for the purposes of verdict and judgment each count is to be treated as a separate indictment (*e*)

Separate  
treasons and  
separate mis-  
demeanours  
Felony  
and mis-  
demeanour

Separate offences cannot be alleged in one count of an indictment (*f*), but separate treasons, or separate misdemeanours, may be lawfully charged in separate counts of the same indictment (*g*)

A count for treason or felony cannot be lawfully joined in the same indictment with a count for misdemeanour (*h*)

In an indictment for high treason different species of treason may be joined in different counts (*i*), the same course may be followed in an indictment for treason felony (*k*)

Different  
felonies.

At common law there was no legal objection to several different felonies being charged in different counts of one indictment (*a*), but it is a well-established rule of practice that, if different felonies, not being different ways of describing the same act, are charged in separate counts of one indictment, the judge will put the prosecutor to his election to proceed and offer evidence on one charge only (*b*).

Where the same transaction gives rise to several felonies, or where the same act is charged in different counts as constituting different crimes, or where the joinder of different felonies is expressly authorised by statute, the prosecutor will not be put to his election (*c*)

222, *R v Wade* (1831), 1 B & Ad 861, *R v Soper* (1825), 3 B & C 857, *R v Sainsbury* (1791), 4 Term Rep 451, *R v Westley* (1809), Bell, C C 193, *R v Jameson*, [1896] 2 Q B 420

(*d*) *R v Atkinson* (1706), 1 Salk 382, *R v Trafford* (1831), 1 B & Ad 874, *Young v R* (1789), 3 Term Rep 98, *R v Benfield* (1793), 2 Burr 980, 985 But two or more persons cannot be jointly indicted for perjury (*R v Phillips* (1731), 2 Stra 921) As to principals and accessories, see p 257, *ante*

(*e*) *Latham v R* (1864), 5 B & S 635, *Castro v R* (1881), 6 App Cas 229 And see p 334, *ante*

(*f*) See p 340 *ante*

(*g*) But the prosecutor may be put to his election in such a case to proceed on one or some of such counts

(*h*) *Castro v R* (1881), 6 App Cas 244

(*i*) See 2 Chitty, Criminal Law 67 73

(*k*) Treason Felony Act, 1848 (11 & 12 Vict c 12), s 5

(*a*) *Castro v R* (1881), 6 App Cas 229, *per* Lord BLACKBURN, at p 241

(*b*) *Ibid*, *Young v R* (1789), 3 Term Rep 98, 106, *R v Heywood* (1864), 12 C & C 451, *O'Connell v R* (1844), 5 State Tr (n s) 1, 784, *R v Mutchel* (1848), 8 State Tr (n s) 599, C O R. See *R v Rye* (1909), 2 Cr App Rep 155, *R v Elliott*, [1906] 2 K B 452, C O A

(*c*) *R v Eggleston* (1801), 2 Bos & P 508, *R v Dunn* (1826), 1 Mood C C 146, *R v. Husley* (1841), 2 Mood & R 524, *R v Strange* (1837), 8 C & P 172, *R v Trueman* (1839), 8 C & P 727, *R v Jones* (1839), 8 C & P 776, C O R., *Campbell v R* (1846), 11 Q. B 799, *R v. Bleasdale* (1848), 2 Car & Kir 765, *R v Shepherd* (1868), L R 1 C C R 118, *R v. Firth* (1869),

The joinder of a count for felony with a count for misdemeanour in one indictment makes the indictment bad (d)

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ments.

Several different misdemeanours may be charged in different counts of the same indictment, but if the charges relate to different acts and the joinder of such charges embarrasses the defendant, the prosecutor will be put to his election upon which charge he will proceed (e).

Different misdemeanours should not be charged against different defendants in one indictment, *e.g.*, a charge of a conspiracy between two persons should not be joined with a charge of a conspiracy between one of such two persons and a third person (f)

Different mis-  
demeanours.

If several counts are joined in one indictment, a verdict should be taken separately on each count, because if there is a general verdict and a general judgment on the whole indictment, and some of the counts should be decided to be bad, the whole judgment is vitiated (g)

Verdict  
should  
be taken  
separately  
on each  
count.

#### SUB-SECT 3—Defective Averments

**666** Where an offence has been created by statute, or subjected to a greater degree of punishment by statute, the indictment is

When defect  
in an indict-  
ment is cured  
by verdict.

*I. R. 1 C C R 172, R v Henwood (1870), 11 Cox, O C 526, U C R See R v Rye (1909), 2 Cr App Rep 150* If a defendant is charged as an accessory before the fact in one count and as accessory after the fact in another count to the same felony, the prosecutor will not be put to his election (*R v Blackson (1837) 8 C & P 43, R v Mitchel (1848), 6 State Tr (N s) 599, 620, 621*) A defendant may be charged as principal in the first degree in one count and as principal in the second degree in another count (*R v Gray (1835), 7 C & P 164*), or as principal in one count and as accessory after the fact to the same felony in another count (*Accessories and Abettors Act, 1861 (24 & 25 Vict c. 94), s 3, R v Tuffin (1903), Archbold, Criminal Pleading, 23rd ed., 89, where R v Brannon (1880), 14 Cox, C C 394, to the contrary effect, was not followed* See also *R v Austin (1837) 7 O & P 796, R v Hartall (1836), 7 O & P 475, R v Wheeler (1835), 7 C & P 170, R v Pulham (1840), 9 C & P 280*) A count for feloniously receiving stolen property known to be stolen may be joined with a count for stealing (*Larceny Act, 1861 (24 & 25 Vict c. 96), s 92*), and the prosecutor cannot in such a case be put to his election (*ibid*) But a count for stealing certain property ought not to be joined with a count for stealing the same and other property, and if such counts are joined the prosecutor will be put to his election (*R v Ward (1860), 2 F & F 19*) As to charging different acts of embezzlement and larceny against the same person in one indictment, see *Larceny Act, 1861 (24 & 25 Vict c. 96), ss 5, 6, 71* As to joining different persons as principals and accessories in the same indictment, see pp 257, 258, *ante*

(d) The challenges and the incidents of the trial are not the same in felony and misdemeanour, and felony and misdemeanour cannot be tried together (*Castro v R (1881), 6 App Cas 229, per Lord BLACKBURN, at p 244*) But if an indictment contains a count for felony and a count for misdemeanour, and the prisoner is convicted of either the felony or the misdemeanour and acquitted of the other charge, the conviction is good (*R v Ferguson (1855), Dears C C 427, R v Jones (1839), 2 Mood C C 94*)

(e) *Young v R (1789), 3 Term Rep 98, 105, 106, R v Kingston (1801, 8 East, 41, R v Jones (1809), 2 Camp 131, R v Johnson (1815), 3 M & S 539, R v Toule (1816), Russ & Ry 314, R v Murphy (1837), 8 C & P 297, R v Bassett (1843), 1 Cox, C C 51, R v Russell (1848), 6 State Tr (N s) 723, R v Braun (1862), 9 Cox, O C 284, R v Barry (1865), 4 F & F 584, R v Burch (1865), 4 F & F 407, Castro v R (1881), 6 App Cas 229, 231, R v King, [1897] 1 Q B 214, 216, C C R*

(f) 1 Chitty, Criminal Law, 254, *R v Kingston (1806), 8 East, 41, R v Warren, Times, October 31, 1907, p 2, Roscoe, Criminal Evidence, 13th ed., 364*

(g) See *O'Connell v R (1844), 5 State Tr. (N s.) 1.*

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**ments.**

sufficient after verdict if it describes the offence in the words of the statute (*h*)

If an averment in an indictment for such an offence is imperfectly stated and the jury find a verdict of guilty, and if it appears to the court that the verdict could not have been found without proof of the averment, then the defective averment is cured by verdict (*i*).

After verdict a defective averment in one count of an indictment may be aided by reference to another count (*j*)

But the verdict will not cure the total omission of an essential averment (*k*).

**SUB-SECT. 4—Amendment**

**Amendment.**

**667** At common law an indictment could not be amended except by the grand jury that found it (*l*) Limited powers to amend indictments in cases of misnomer have been conferred by statute (*m*) on the court which tries the indictment Further powers of amendment have been conferred by statute (*n*) in case of a variance between any matter in writing or print produced in evidence and the recital or setting forth of such matter in the indictment (*o*) Further powers of amendment have been conferred by statute (*p*) as regards any variance between the statement in an indictment for felony or misdemeanour and the evidence offered in proof of the statement in the name of any county or place mentioned in the indictment, in the name or description of any person or persons or body politic or corporate stated to be the owner or owners of any property which is the subject of any offence charged, or to be injured, or intended to be injured, by the commission of such offence, or in the christian name or surname or both the christian name and surname or other description of any person or persons named or described in the indictment; or in the name or description of any matter or thing, or

(*h*) Criminal Law Act, 1826 (7 Geo 4, c. 64), s. 21. See *R v Barton* (1826), 1 Mood C C 141, *R v Turner* (1829), 1 Mood C C 259, *R v Washburn* (1836), 1 Mood C C 406, *R v Ryan* (1837), 2 Mood C C 15, *R v Martin* (1838), 8 Ad & El 481, *R v Bent* (1845), 1 Den 157, *Hamilton v R* (1846), 9 Q B 271, *Douglas v R* (1847), 13 Q B 74, *R v Bowen* (1849), 13 Q. B. 790, *R v Rowlands* (1851), 2 Den. 364, *Nash v R* (1864), 4 B & S 935, *R v Harvey* (1871), L R 1 C C R 284, *R v Goldsmith* (1873), L R 2 C C R 74, *Heymann v R* (1873), L R 8 Q. B 102, *Taylor v R*, [1895] 1 Q. B 25

(*i*) *Heymann v. R* (1873), L R 8 Q B 102, *R v Goldsmith* (1873), L R 2 C C R. 74, *R v Aspinall* (1876), 2 Q. B D 48, C A, *R v Strouglyer* (1886), 17 Q. B D 327, C C R., *Taylor v R*, [1895] 1 Q B 25

(*j*) *R v Waters* (1848), 1 Den 356, *R v Waverton (Inhabitants)* (1851), 17 Q. B 562

(*k*) Archbold, Criminal Pleading, 23rd ed., 55.

(*l*) *R v Wilkes* (1770), 19 State Tr 1075, at pp 1120—1121.

(*m*) Criminal Law Act, 1826 (7 Geo 4, c. 64), s. 19. This statute also gave power to amend a wrong "addition" or "want of addition," but want of or imperfection in the "addition" of a defendant is now immaterial (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24)

(*n*) Criminal Procedure Act, 1848 (11 & 12 Vict. c. 46), s. 4

(*o*) *Ibid*; applied to quarter sessions by the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 10.

(*p*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1

in the ownership of any property named or described in the indictment (a)

If there is such variance, and the court which tries the indictment considers that it is not material to the merits of the case and that the defendant cannot be prejudiced in his defence on such merits by an amendment, the court may order the indictment to be amended according to the proof, and the trial is to proceed as if the indictment had originally been in the form in which it is after the amendment has been made (a)

The only court which can exercise the power of amendment is the court that tries the indictment (b)

SECT. 2.  
Form of  
Indictments.

### SECT. 3.—Finding of an Indictment by a Grand Jury.

**668** A bill of indictment is generally drawn for the assizes by the clerk of indictments, and for quarter sessions by the clerk of the peace, but in cases of difficulty it is drawn by counsel (c).

Drafting of  
bill of  
indictment.

(a) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), ss 1, 2, 3 The amendment must be made before the case goes to the jury (*R v Frost* (1855), Deares C C 474, *R v Larkin* (1864), Deares C C 365, *R v Fullarton* (1853), 6 Cox, C C 194, *R v Rymes* (1853), 3 Car & Kir 320) When an amendment has been made, the amendment cannot be amended, and the original indictment cannot be reverted to in its unamended form (*R v Barnes* (1866), L R 1 C C R 4), *R v Pritchard* (1861), L & Ca 34) The following are instances where indictments can be amended *R v Wentley* (1859), Bell, C C 193 (erroneous and unnecessary statement of time of passing of an Act of Parliament), *R v Sturge* (1854), 3 E & B 734 (misdescription of one of the termini of a footway), *R v Sutton* (1877), 13 Cox, C C 648 (misdescription of occupation of field), *R v Vincent* (1852), 2 Den 464, and *R v Marks* (1866), 10 Cox, C C 367 (misdescription of ownership of stolen property and see *R v Murray*, [1906] 2 K B 385, C C R), *R v Gumble* (1872), L R 2 C C R 1 (misdescription of stolen property), *R v Neville* (1855), 6 Cox, C C 60 (misdescription of property destroyed), *R v Western* (1865), L R 1 C C R 122 (misdescription of tribunal before which perjury is alleged to have been committed), *R v Tymms* (1870), 11 Cox, C C 615 (amendment of description of summons on the hearing of which perjury was alleged to have been committed), *R v Helton* (1862), 9 Cox, C C 297 (failure to prove alleged name of child murdered), *R v Byers* (1907), 71 J P 205 (misdescription in name of child in respect of whose funeral a false pretence was alleged to have been made) See *R v Winch* (1855), 6 Cox, C C 523 *R v Smith* (1858), 1 F & F 36, *R v Dukinfield (Inhabitants)* (1863), 4 B & S 158 But an amendment will not be made when the effect of the amendment would be to alter the nature or quality of the crime charged, or to substitute a charge of one offence for another (*R v Benson*, [1908] 2 K B 270, C C R), or to alter a felony into a misdemeanour (*R v Wright* (1860), 2 F & F 320), or a misdemeanour into a felony (*R v Shott* (1851), 3 Car & Kir 206), or to substitute a different allegation of false pretences from that set out in the indictment (*R v Basley* (1852), 6 Cox C C 29), or to add an essential averment, e.g., "with intent to defraud," the omission of which makes the indictment bad (*R v James* (1871), 12 Cox, C C 127), see, too, *R v Lallement* (1853), 6 Cox, C C 204, *R v Davison* (1850), 7 Cox, C C 158, *R v Garnham* (1861), 8 Cox, C C 451, *R v Robinson* (1864), 4 F. & F. 43 As to amending a coroner's inquisition, see Coroners Act, 1867 (30 & 31 Vict. c 71), s. 20, and *R v. Great Western Rail Co (Directors)* (1888), 20 Q. B D 410

(b) *R v Great Western Rail Co (Directors)* (1888), 20 Q. B D 410

(c) The fee of the clerk of indictments or clerk of the peace for drawing an indictment in a case of felony is limited to two shillings, see stat 10 Will. 3. s. 12, ss. 7, 8.

SECT. 3  
**Finding of  
 an Indict-  
 ment by a  
 Grand Jury.**  
 —  
 Grand jury  
 Number  
 Charging the  
 grand jury

It is engrossed on parchment, and the names of the witnesses whom it is intended to examine before the grand jury are indorsed on it (*d*)

**669** A bill of indictment does not become an indictment till it has been presented to and found by a grand jury. The bill must be found by at least twelve grand jurors, and the practice is to call twenty-three (*e*). They are called and sworn immediately after the opening of the court (*f*), and the presiding judge charges them as to the bills of indictment which are to be laid before them, in most cases these bills relate to charges into which the examining justices have already inquired and with respect to which depositions have been taken. The presiding judge advises the grand jury whether the evidence in reference to any particular bill as disclosed in those depositions is sufficient to constitute a *prima facie* case against the accused, and advises them, if it does, to return a true bill, and, if it does not, to throw out the bill.

Consideration  
 of bills  
 Evidence

**670** The grand jury, having been charged, retire to a private room, and the bills are laid before them (*g*)

The witnesses in support of each bill are sworn by the foreman or any other member of the grand jury acting on his behalf.

As each witness is sworn and examined, the foreman writes his initials against the name of such witness indorsed on the bill (*h*)

(*d*) An indictment must be in English. As to the form of indictments, see p 344, *ante*.

(*e*) 2 Hale, P O 161, *R v Clyncard* (1599), 2 Cro Eliz. 654. There cannot be more than twenty-three (2 Burr 1088, *R v Marsh* (1837), 6 Ad & El 236, 241). As to the qualification etc of grand jurors, see title JURIES.

(*f*) As to objections to a grand juror, see 2 Hale, P O 165, 2 Hawk P O, c 25, s 16, *R v Lewis* (1679), 7 State Tr 250, *R v Sheares* (1798), 27 State Tr 257, 267, *R v Jackson* (1795), 25 State Tr 783, 887.

(*g*) Neither counsel nor solicitor for the prosecution is admitted to the room. At the Central Criminal Court no person, other than the witnesses, is allowed to enter the grand jury rooms, except by written order of the clerk of the court or his deputy (Rules, December 12, 1892, r 6). The practice was formerly different, see *Trials of the Regicides* (1660), 5 State Tr 972, *R v Shottesbury (Earl)* (1681), 8 State Tr 771, and Grand Juries Act, 1856 (19 & 20 Vict c 54, s 2).

(*h*) Grand Juries Act, 1856 (19 & 20 Vict. c 54), ss 2, 3, *R v Dickinson* (1819), Russ & Ry 401. The provisions as to indorsing and initialling the names of the witnesses are, it seems, only directory (*O'Connell v R* (1844), 11 Ul & Fin 155, 405, H L). An improper mode of swearing the witnesses before a grand jury will not vitiate the indictment (*R v Russell* (1842), Car & M 247, *R v Bullard* (1872), 12 Cox, C C 353, *O'Connell v R*, *supra*). A grand jury may present an indictment on their own knowledge and without any evidence (*R v Russell*, *supra*, *R v Bullard*, *supra*). If a witness who has been examined before the examining justices is dead or ill, his deposition may be read before the grand jury without proof of the facts evidence of which is required by the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17 (*R v Clements* (1851), 2 Den 251, *R v Bullard* (1872), 12 Cox, C C 353, *R v Gerrans* (1876), 13 Cox, C C 158; *R v Lynch* (1902), Archbold, Criminal Pleading, 23rd ed., 100). Some judges, however, have required such evidence to be given before a deposition can be read before the grand jury (*R v Philips* (1858), 1 F & F 105, *R v Wilson* (1874), 12 Cox, C C 622, *R v Beaver* (1866), 16 Cox, C C 274, compare *R v Rendle* (1861), 11 Cox, C C 209). The



A witness who refuses to be sworn is punishable for contempt of court (i)

**671** If a majority of the jury, consisting of twelve at least, think that there is "probable evidence" in support of the offence charged in a bill, the words "True bill" are indorsed on the indictment, which is then said to be "found." If they think there is not such evidence, the words "No true bill" are to be indorsed on the indictment, which is then said to be "ignored." In each case the foreman should write his signature on the back of the bill (k)

When one or more bills have been so indorsed, the foreman, accompanied by some of the grand jurors, returns into court with the bills that have been found or ignored and delivers them to the clerk of the court (l)

The clerk of the court, addressing the grand jury, then says, "Gentlemen of the grand jury, you find a true bill" (or "no true bill") against — for (the offence charged, *e.g.* murder, larceny etc. or, if it is a misdemeanour, "for a misdemeanour") (m)

If any more bills remain to be considered, the grand jury return to their room and proceed with the consideration of the other bills and present them in the manner above described, either singly or in batches

**672** When all the bills have been dealt with, the grand jury either make some presentment on some matter of public concern, or present that they "find nothing presentable except that which they have before presented", thereupon the presiding judge discharges them from further attendance, and after this no more bills can be found at that session of the court (n)

SECT. 2.  
Finding of  
an Indict-  
ment by a  
Grand Jury

Finding or  
ignoring of  
bills

Delivery of  
bills.

Presentments.

Discharge.

grand jury cannot hear witnesses for the defence, and neither the defendant nor the wife or husband of the defendant can give evidence before them under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36) (*R v Rhoads*, [1899] 1 Q. B. 77, C. C. R.) A witness who gives false evidence before a grand jury is indictable for perjury. Evidence to prove such perjury must be given by persons present at the time, *e.g.*, other witnesses (*R v Hughes* (1841), 1 Car. & Kir. 519), but not by any of the grand jurors, as they cannot give evidence of what passes in the grand jury room (*R v Hughes, supra*, *R v Marsh* (1837), 6 Ad. & El. 236, 237), but see 1 Chitty, Criminal Law, 317

(i) *R v Preston (Lord)* (1691), 1 Salk. 278

(k) 2 Hale, P. C. 157. The signature of the foreman is not essential (*R v Sidols* (1833), 1 Lew. C. C. 55)

(l) *R v Thompson* (1846), 1 Cox, C. C. 268.

(m) A bill which has been thrown out may be again preferred to the same grand jury during the same assizes or sessions (*R v Simmonds* (1843), 1 Cox, C. C. 30, *R v Newton* (1843), 2 Mood & R. 503), but see *R v Humphreys* (1842), Car. & M. 601, *R v Austin* (1850), 4 Cox, C. C. 385. In practice a bill is only preferred again to the same grand jury by the direction of the judge. A fresh bill may be preferred at the next assizes or sessions, unless a time limit prevents (see *R v Killminster* (1835), 7 C. & P. 228). If a bill is ignored the defendant may, if he is in custody, be detained until the grand jury are discharged, and then, if no fresh bill has been found against him, he is entitled to be discharged (*R v Simmonds, supra*)

(n) But the grand jury, though formally discharged, may, if they have neither left the precincts of the court nor separated, be recalled and charged with other bills (*R v Holloway* (1839), 9 C. & P. 43)

**SECT 3**  
**Finding of**  
**an Indict-**  
**ment by a**  
**Grand Jury**

Several  
indictments  
against one  
person  
Different  
kinds of  
finding  
Void finding

**Grand jury  
at quarter  
sessions  
finding bill  
which must  
be tried at  
assizes  
Immunity of  
grand jury**

**673** A grand jury may at the same court, subject to the provisions of the Vexatious Indictments Act, 1859, return any number of indictments against the same person (o). If an indictment contains more than one count, they may find a true bill on one or more counts and no true bill on others (p). If two persons are jointly indicted, the grand jury may find a true bill as to one and no true bill as to the other (q). If a person is indicted for murder, they may find a true bill for manslaughter. They cannot return a true bill as to part of a count or of an indictment which contains only one count and no true bill as to the other part (r). A conditional or inconsistent finding is void (s). They cannot ignore a bill on the ground of the insanity of the defendant (a).

SECT. 4.—*Certiorari*.

## SECT. 4.

*Certiorari*.

**676** An indictment or presentment found by any court may be removed into the King's Bench Division of the High Court of Justice by a writ of *certiorari* issuing out of that court. The object of the removal is to obtain a trial at bar or before the justices of assize or at the sittings of the High Court of Justice in London or Middlesex or to quash the indictment or presentment (*i*).

Removal of  
indictment  
by *certiorari*.

The writ of *certiorari* is demandable as of right by the Attorney-General acting on behalf of the Crown (*h*), and it seems that it is demandable as of right in the case of an indictment against a body corporate which is not authorised to appear by solicitor in the court in which the indictment is preferred (*l*). In other cases an indictment will not be removed into the King's Bench Division for trial, either at the instance of the prosecutor or of the defendant, unless the party applying for the removal shows to the satisfaction of the court that a fair and impartial trial of the case cannot be had in the court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a special jury or a view of the premises in respect whereof any indictment is preferred may be required for a satisfactory trial of the case in a county other than that in which the indictment is preferred (*m*).

When  
granted.

An indictment may also be removed by *certiorari* into the Central Criminal Court (*n*).

**677** On an order for the issue of the writ of *certiorari* being made, and on the necessary recognisance being entered into and lodged with the clerk of the peace or clerk of assize who has custody of the indictment, all proceedings upon the indictment in the court below are stayed (*o*). A return is then made to the writ by indorsing on the writ a memorandum signed and sealed by one of the persons to whom the writ is addressed and by returning the writ to the Crown Office with the indictment and other documents ordered to be returned (*p*).

Effect of  
writ

Return.

If an indictment has been removed by *certiorari* before trial into the King's Bench Division and remains there, it is usually tried at the assizes or in the King's Bench Division in the same way as a civil action, but an order may be made by the King's Bench

Trial.

formerly annexed to the indictment in proceedings in error, but these proceedings are now abolished, see p 433, *post*.

(*g*) Short and Mellor, *Practice of the Crown Office*, 2nd ed, 10, *Judicature Act, 1873* (36 & 37 Vict. c 66), s 34; and title CROWN PRACTICE. As to the removal of indictments found at quarter sessions, see *Quarter Sessions Act, 1812* (5 & 6 Vict. c 38), s. 2, and *Central Criminal Court Act, 1834* (4 & 5 Will 1, c 36), s. 16.

(*h*) *R. v Eaton* (1787), 2 Term Rep 89, *R v Thomas* (1815), 4 M. & S. 412, *R v Lewis* (1789), 4 Burr 2456, at p. 2458, see *Cumberland (Inhabitants) v R* (1803), 3 Bos & P. 354, H. L.

(*i*) See p 266, *ante*.

(*m*) See title CROWN PRACTICE.

(*n*) See title CROWN PRACTICE.

(*o*) See *R v. Battams* (1801), 1 East, 298.

(*p*) See title CROWN PRACTICE.

**SECT. 4**  
**Certiorari.**

Division, or in vacation by a judge in chambers, that the trial shall take place at the Central Criminal Court (g).

**Change of  
venue**

**678** The removal of an indictment by *certiorari* into the King's Bench Division does not change the venue, and unless an order is made changing the venue, or unless the Attorney-General, prosecuting on behalf of the Crown, demands a trial at bar, the indictment will be tried at the civil side of the assizes for the county where the indictment was found (r). If an indictment is removed from the Central Criminal Court to the King's Bench Division, the writ of *certiorari* must specify the county or jurisdiction in which the indictment is to be tried, and a jury must be summoned and the trial must proceed in the same manner as if the indictment had originally been found in that county or jurisdiction (s).

**Application  
for change of  
venue.**

In other cases where an indictment has been removed by *certiorari*, an application to change the venue must be made to the divisional court of the King's Bench Division during the sittings or in vacation to a judge in chambers (a).

**Trial at bar**

**679** If an indictment has been removed by *certiorari* into the King's Bench Division, the Attorney-General, if prosecuting on behalf of the Crown, has the right to demand a trial at bar, that is, a trial before at least three judges of that division (b). A trial for treason committed abroad under 35 Hen 8, c 2, s 1, is tried at bar without any application by the Attorney-General (c).

**SECT 5 —Nolle Prosequi**

**Stay of pro-  
ceedings  
by nolle  
prosequi.**

**680** Proceedings on an indictment may be stayed at any time after the finding of the indictment and before judgment by the entry of a *nolle prosequi* (d), which can only be entered by the authority

(g) See title CROWN PRACTICE

(r) Crown Office Rules, 1906, r 14, see 2 Co Inst 421, 6 Hen 8, c 6 (1514—6)

(s) Crown Office Rules, 1906, r 18, *R v Castro* (1874), L R 9 Q B 350, 355. If an indictment for an offence committed out of the jurisdiction of the Central Criminal Court is removed under the Central Criminal Court Act, 1856 (19 & 20 Vict c 16), into that court for trial, the removal operates *ipso facto* as a change of venue to that court.

(a) See title CROWN PRACTICE. The court has power to change the venue both in felony and in misdemeanour, but only exercises it in two cases—(1) where it is shown that a fair and impartial trial cannot be had in the county or other jurisdiction where the venue is laid (see *R v Broughton*, [1895] 2 I R 386, *R v Barrett* (1870), 41 R C L 285, *R v Fay* (1872), 6 I R C L 436, *R v Patent Fertiliser and Sanitary Manure Co, Ltd* (1865), 13 L T 367, *R v Dunn* (1847), 11 Jur. 287, *R v Holden* (1833), 5 B & Ad 347, *R v Hunt* (1820) 3 B & Ald 444, *R v Penprase* (1833), 4 B & Ad 573, *R v Paule* (1726), 2 Ld Raym 1452), (2) when it appears necessary that the jury should have a view of premises situate in a different county from that in which the indictment is preferred (*R v Sheldon* (1876), 32 L T 27, *R v Gyde* (1908), 72 J P 504), see Short and Mellor, *Practice of the Crown Office*, 2nd ed., 106—107.

(b) *R v Hales* (1728), 2 Stra 816, *R v Castro* (1874), L R 9 Q B 350, *Dixon v Farrer* (1886), 17 Q B D 658, see *R v Jameson*, [1896] 2 Q B 425, at p 431, n., Crown Office Rules, 1906, rr 150—155.

(c) *R g., R v Lynch*, [1903] 1 K B 444.

(d) As to the form of an entry of a *nolle prosequi*, see Crown Office Rules, 1906, Appendix, No 120, Short and Mellor, *Practice of the Crown Office*,

of the Attorney-General (e) The effect of this is that all proceedings on the indictment are stayed, and the defendant, if he is in custody, is discharged, but may be indicted afresh on the same charge.

SECT 5.  
Nolle  
Prosequi.

## Part V.—Trial of Indictments.

### SECT 1—*Proceedings before Plea.*

#### SUB-SECT 1—*Appearance*

681 If an indictment has been found against a defendant and he is in custody, he is placed at the bar in the dock (f) If he has been bound over to appear, he is called upon to surrender, and if he surrenders, he takes his place in the dock, unless he has been allowed by favour of the court in the case of a misdemeanour to appear by attorney (g)

Appearance  
of defendant.

If the defendant has been bound over and does not surrender, his recognisances and those of his bail, if bail has been required, may be estreated by the written order of the presiding judge (h), and a bench warrant may be issued for his arrest (i)

Proceedings  
if defendant  
does not  
appear.

2nd ed., 553 A *nolle prosequi* may be entered as against one of two or more defendants who are jointly indicted to enable one such defendant to give evidence for the Crown against his co-defendants For form of the Attorney-General's fiat to enter a *nolle prosequi* in such a case, see Archbold, Criminal Pleading, 23rd ed., 139 As to entry of the verdict, see *R v Hempstead* (1818), Russ & Ry 344

(e) *R v Dunn* (1843), 1 Car & Kir 730

(f) He ought to be brought to the bar without irons or other restraint, unless there is a danger of escape or violence (see 2 Hawk P C, c 28, s 1, 1 Chitty, Criminal Law, 417, and *R v Brazier* (1899), Archbold, Criminal Pleading, 23rd ed., 181)

(g) *R v Bacon* (1664), 1 Lev 146 In cases of indictment against a corporation aggregate the corporation pleads by attorney, but, owing to the difficulty of enforcing the appearance of a corporation, an indictment against a corporation is generally removed to the civil side of the assizes or to the King's Bench Division (*R v Birmingham and Gloucester Rail Co* (1842), 3 Q B at p 233, *R v Manchester Corporation* (1857), 7 E & B 458, Corner's Crown Practice, 53, Crown Office Rules, 1906, r 13) In case of an indictment which is found in the King's Bench Division or has been removed there or to the civil side of the assizes, if the charge is one of treason or felony, the defendant must appear personally in court to plead, unless he has obtained the permission of the court to plead by a solicitor (Crown Office Rules, 1906, r 121) If the charge is one of misdemeanour, or if the defendant on a charge of treason or felony has obtained leave to plead by a solicitor, the defendant may enter a written plea (Short and Mellor, Practice of the Crown Office, 2nd ed., 100) As to prisoners standing in the dock, see *R v Horne Tooke* (1794), 25 State Tr 1, 12, *R v St George* (1840), 9 C & P 483, *R v Douglas* (1841), Car & M 193, *R v Zulusta* (1843), 1 Car & Kir 215 A defendant in misdemeanour who is conducting his own defence may after arraignment by special permission of the court leave the dock and take a seat at the table of the court After he has once pleaded, his presence is not indispensably necessary (see *R v Curle* (1834), 6 C & P 636) For instances of trials proceeding in the absence of a prisoner, see *R v Berry* (1897), 104 L T Jo 110, *R v Castro* (1873), Shorthand Notes III, 2326 (53rd day)

(h) Criminal Law Act, 1826 (7 Geo 4, c 64), s 31

(i) 1 Chitty, Criminal Law, 339 If the defendant is not in custody and has not been bound over to appear, on a production of a certificate of the finding of the

**SECT. 1.**  
**Proceedings**  
**before**  
**Plea.**

Illness of  
defendant  
Appearance  
by counsel

Poor  
Prisoners  
Defence Act

**682** If the defendant is ill and unable to take his place in the dock, the trial, unless the indictment is in the King's Bench Division, cannot proceed (k)

**683** Both prosecutor and defendant are entitled to have counsel to appear on their behalf to conduct the prosecution and the defence respectively (l)

It is the invariable practice at the assizes and the Central Criminal Court, and at most courts of quarter sessions, for the prosecution to be conducted by counsel (m)

A defendant, if he wishes and if he has the means, may be assisted by solicitor and counsel, or may instruct counsel "from the dock" directly (n)

**684** If a defendant's means are insufficient to enable him to obtain legal aid, and if it appears from the nature of the defence set up by him as disclosed in the evidence given or statement made before the committing justices that it is desirable in the interests of justice that he should have legal aid, the committing justices upon the committal of the defendant for trial and the judge of a court of assize or a chairman of a court of quarter sessions or a recorder at any time after reading the depositions, may certify that the prisoner ought to have legal aid, and thereupon the defendant is entitled to have a solicitor and counsel assigned to him, if a solicitor is assigned, he instructs counsel and procures any evidence required on the prisoner's behalf (o)

indictment for the offence, the defendant may be arrested on a warrant issued by any justice or justices of the county or place in which the offence is alleged to have been committed or in which the person indicted resides or is, or is supposed or suspected to be. On the person being brought before the justice or justices of the place where the warrant was issued the justices, on proof that he is the person named in the indictment, may without further inquiry or examination commit him for trial or admit him to bail (Indictable Offences Act, 1818 (11 & 12 Vict c 42), s 3). In indictments for the non repair or obstruction of highways, bridges etc the defendants are generally allowed to appear by attorney. In such a case they do not take their places in the dock to plead orally, but plead in writing (see Archbold, Criminal Pleading 23rd ed., 179)

(k) See *R v Derryghouse* (1847), 2 Cox, C C 446. If a prisoner has been committed for trial and it appears to any two members of the visiting committee of the prison in which the prisoner is awaiting his trial that he is insane, they are to call to their assistance two legally qualified medical practitioners, and such members of the committee and practitioners are to examine the prisoner and inquire into his sanity, and after such examination and inquiry may certify in writing that he is insane, on a prisoner being so certified to be insane a Secretary of State may remove such prisoner to a lunatic asylum and order him to be detained there, until he is remitted to prison or discharged (Criminal Lunatics Act 1881 (47 & 48 Vict c 64), s 2 (1), (3), and see s 16, definition of "prisoner")

(l) Formerly counsel were not allowed to appear for defendants on a charge of felony except to argue points of law for them, but the law was altered as to treason by the Treason Act, 1695 (7 & 8 Will 3, c 3), s 1, and as to felony by the Trials for Felony Act, 1836 (6 & 7 Will 4, c 114), s 1. A point of law in favour of a defendant may be suggested to the court or argued by counsel who is not instructed in the case, or by anyone else acting as *amicus curiæ* (see *Lilburn's Trial* (1649), 4 State Tr 1270, 1305, *R v Ratcliffe* (1746), 18 State Tr. 430, 436; 1 Chitty, Criminal Law, 408, *Faulkner v R.* [1905] 2 K B 76)

(m) See p 383, *post*, and title BARRISTERS, Vol II, p 373

(n) See title BARRISTERS, Vol II, p 389

(o) Poor Prisoners Defence Act, 1903 (3 Edw 7, c 38), s 1. See rules made

## SUB SECT 2—Arraignment.

SECT. 1.  
Proceedings  
before  
Plea.

Arraignment.

**685.** If the defendant appears in the dock, he is called upon by name and told to hold up his hand (p), and he is then arraigned by the officer of the court. The arraignment consists of reading over the indictment, or the material parts or an abstract of it, and asking the accused whether he is guilty or not guilty (q).

**686** If the defendant on being arraigned stands mute and does not answer, the court directs a jury to be impanelled from the panel or any persons present and sworn to try the issue whether he is mute of malice or by the visitation of God (r).

Defendant  
standing  
mute.

If the defendant has counsel, his counsel may address the jury and call witnesses to prove that he is mute by the visitation of God (s).

If the jury find that the defendant is mute of malice, the court may order the proper officer to enter a plea of not guilty on the defendant's behalf, and the plea so entered will have the same effect as if he had actually pleaded it (a).

If the jury find that the defendant is mute by the visitation of God, the jury may be resworn to try if he is fit to plead, if the defendant can communicate by signs, and there is anyone who can interpret the signs to the court, or if the defendant can read and write, the jury should be directed to find that he is able to plead, and the defendant can then be arraigned and can answer by signs or by means of writing (b).

under the Act, 13th May, 1904, Statutory Rules and Orders, 1904, p 123. A defendant may also obtain permission to defend *in forma pauperis* and, if he obtains such permission, may have counsel assigned to him (1 Chitty, Criminal Law, 412), but this course is rarely adopted.

(p) The holding up the hand is a mere ceremony to show the court who the prisoner is (see *Lalburne's Trial* (1649), 4 State Tr 1270, at p 1289, *Stafford's (Lord) Trial* (1680), 7 State Tr 1294, 1555).

(q) If an indictment contains a count which alleges merely a previous conviction, the defendant is not to be arraigned on that count until after he has pleaded guilty or has been convicted, if he is arraigned on such a count without having pleaded guilty or having been convicted and is afterwards tried without a fresh arraignment and is convicted, the conviction is bad (*Larceny Act, 1861* (24 & 25 Vict c 96), s 116, *Faulkner v R*, [1905] 2 K B 76).

(r) *R. v. Jones* (1773), 1 Leach, 102, 1 Chitty, Criminal Law, 424.

(s) *R. v. Roberts* (1816), Carrington, Supplement to Criminal Law, 57.

(a) Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 2. In a case where the jury found a verdict that the defendant stood mute of malice *ERLE, J.*, refused to assign counsel to the defendant, as he had no authority to do so, and as the defendant's assent could not in the circumstances be given (*R. v. Yacubado* (1814), 6 Cox, C O 386). A plea of not guilty may be entered under the Criminal Law Act, 1827, if a defendant refuses to plead on the ground that the court has no jurisdiction (*R. v. Bernard* (1538), 1 F & F 240), or on the ground that he has already pleaded to an indictment for the same offence and has been tried before a court that had no jurisdiction to try the offence (*R. v. Bitton* (1833), 6 C & P. 92).

(b) *R. v. Jones* (1773), 1 Leach, 102, *R. v. Thompson* (1827), 2 Law C. C. 187.

## SECT. 1

Proceedings  
before  
Plea.Trial of issue  
if defendant  
is sane or not

**687** If the jury find that the defendant is not able to plead, the jury are again resworn to try whether he is sane or not, and they should be directed that, if they are satisfied that the defendant from the defect of his faculties has not intelligence enough to understand the nature of the proceedings against him, they ought to find him not sane. If the jury find that the defendant is not sane, then the judge may order him to be detained during the King's pleasure (c)

If they find that he is sane, and the charge is one of misdemeanour, his counsel may plead not guilty for him and the trial can proceed, but if the charge is one of felony, the proper course would seem to be to adjourn the trial, so that the prisoner may be instructed how to plead by signs (d)

Procedure  
if defendant  
appears  
insane

**688** If a person indicted for an offence appears insane, the court may on his arraignment order a jury to be impanelled to try whether he is sane, and, if the jury find that he is then insane, the court may order the finding to be recorded and the person to be kept in custody during the King's pleasure (e)

## SUB-SECT. 3 — Motion to quash Indictment — Demurrer

Motion to  
quash  
indictment

**689** A motion to quash an indictment for a formal defect must be made before the jury are sworn, and should properly be made before plea pleaded (f)

A motion to quash an indictment because of a substantial defect which cannot be amended (g) may be made at any time before verdict, but the proper time to make the motion is before plea pleaded (h)

(c) Criminal Lunatics Act, 1800 (39 & 40 Geo 3, c 94), s 2, *R v Pritchard* (1836), 7 C & P 303, *R v Berry* (1876), 1 Q B D 447, C O R

(d) *R v Dyson* (1831), 1 Lew C C 64, at p 65. In *Steel's Case* (1787), 1 Leach, 451, the jury found that the defendant was mute by visitation of God and, a plea of not guilty was entered for her and she was tried, no further question was asked the jury as to her ability to plead on her sanity. The proper procedure does not seem to have been followed in this case, and it cannot be regarded as an authority (see *R v Pritchard* and *R v Berry*, *supra*). In *R v Stafford Prison (Governor)*, [1909] 2 K B 81, a prisoner who was found by the jury to be mute by the visitation of God was also found to be incapable of pleading and taking his trial upon the indictment and of understanding and following the proceedings by reason of his inability to communicate with and be communicated with by others, it was held that this amounted to a finding that he was insane within the meaning of the Criminal Lunatics Act, 1800 (39 & 40 Geo 3, c 94), s 2

(e) Criminal Lunatics Act, 1800 (39 & 40 Geo 3, c 94), s 2, see *R v Keary* (1878), 14 Cox, C O 143. Where a jury is so impanelled, the onus is on the prosecution to prove the sanity of the defendant (*R v Davies* (1853), 3 Car & Kir 328). The jury may form their own judgment of the defendant's sanity or insanity by his demeanour without any evidence being given, if he shows strong symptoms of insanity, it is unnecessary to ask him if he wishes to cross-examine any witnesses who are called or to make any remarks or offer evidence (*R v Goode* (1837), 7 Ad & El 536)

(f) *R v Rookwood* (1896), 13 State Tr 139, 161, 165, Foot 231, Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 25. Such a motion may be met by an amendment (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 25, Criminal Law Act, 1826 (7 Geo 4, c 64), s 19)

(g) See p. 344, *ante*

(h) *R v Heane* (1864), 4 B & S 947, *R v Goldsmith* (1873), L. R. 2 C O R 74, *R v James* (1871), 12 Cox, C C 127, see *R v Jameson*, [1896]



After verdict an objection to the indictment may be taken by motion in arrest of judgment, if the defect is one that is not cured by verdict (i)

SECT 1  
Proceedings  
before  
Plea.

**690** A defendant may also object to an indictment by demurrer, i.e., allege in writing that the indictment is not sufficient in law, but proceeding by demurrer is now unusual (j).

Demurrer.

## SECT 2—Pleas.

### SUB-SECT 1—*Special Pleas*

**691** A defendant may plead the following special pleas a plea to the jurisdiction, a plea of pardon, a plea of *autrefois convict* or *autrefois acquit*

What a  
defendant  
may plead.

A defendant may also plead the general plea of guilty or not guilty, to an indictment for libel a defendant besides pleading not guilty may plead a special plea that the matter charged as libellous is true, and that its publication was for the public benefit (k), to an indictment against a parish for non-repair of a highway the inhabitants besides pleading not guilty may plead the special plea that some other person or persons are bound to repair *ratione tenuræ* (l). Special pleas must be in writing

A plea to the jurisdiction raises an objection to the jurisdiction of the court (m). It is more usual, however, for the defendant to take advantage of the want of jurisdiction of the court under the general issue (n).

Plea to the  
jurisdiction

A pardon other than a pardon under statute must be specially pleaded, and a person who has received a pardon and pleads the general issue will be taken to have waived his plea (o).

Pardon.

2 Q B 425. When the indictment is for some great crime, such as treason or felony, the court will only quash the indictment "upon the plainest ground," and will leave the defendant to his remedy by demurrer or motion in arrest of judgment (*R v Lynch*, [1903] 1 K B 446, at p 449, *R v Sheares* (1798), 27 State Tr 255, at p 266). So also if the indictment is for a crime of a public nature, as a nuisance to a highway, perjury, sedition (2 Hawk P O, c 25, s 148), a cheat, or an offence founded on fraud or oppression (see 2 East, P C 818 n, *R v Wadsworth* (1694), 5 Mod Rep 13, *R v Orbell* (1703), 6 Mod Rep 42, see, too, *R v Bailey* (1743), 2 Stra 1211, *R v King* (1747), 2 Stra 1268).

(i) See Criminal Law Act, 1826 (7 Geo 4, c 64), s 21, *Heymann v R* (1871), L. R. 8 Q B 102.

(j) See Starkie, Criminal Pleading, Vol I, 315. For the form of a demurrer, see 4 Chitty, Criminal Law, 517.

(k) Libel Act, 1843 (6 & 7 Vict c 96), s 6, see Crown Office Rules, 1906, Appendix, No 81, and title LIBEL AND SLANDER.

(l) See Crown Office Rules, 1906, Appendix, No 70.

(m) See 4 Chitty, Criminal Law, 505, for the form of a plea to the jurisdiction. The plea should be in writing (2 Hawk P O, c 37, s 59).

(n) See *R v Heane* (1864), 4 B & S 947, *R v Goldsmith* (1873), L. R. 2 O. C. R. 74, but see *Kinloch's Case* (1746), Fost 16, *R v Jameson* (1896) 65 L. J. (M. C.) 218, 225.

(o) 2 Hawk. P. C., c. 37, ss 58, 59. If a pardon is granted after plea pleaded, advantage of it may be taken at any time, after verdict in arrest of judgment, and after judgment in arrest of execution. For form of plea, see 3 Co Inst 234, Tremaine, P. O., 311, 2 Hale, P. O. 391, as to pardon, see title CONSTITUTIONAL LAW, Vol. VI, p 404.

## BOOK 2

## Pleas

*Autrefois  
convict or  
acquit*

**692** The plea of *autrefois convict* or *autrefois acquit* avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned (p).

If the defendant pleads *autrefois convict* or *autrefois acquit*, the prosecution replies or demurs. If the prosecution replies, which is the usual course, a jury is sworn to try the issue (q).

The onus of proving the plea is on the defendant, he may prove it by producing a certified copy of the record or proceedings of the alleged previous conviction or acquittal (r), and showing by such copy or by other evidence, if necessary, that he has been convicted or acquitted of the offence on which he has been arraigned or that he might on his former trial have been convicted of the offence on which he has been arraigned (s), or that his previous conviction or acquittal is by statute a bar to subsequent proceedings for the same cause (t).

The question for the jury on the issue is whether the defendant has previously been in jeopardy in respect of the charge on which he is arraigned, for the rule of law is that a person must not be put in peril twice for the same offence.

The defendant can only succeed on such a plea if the charge to which he pleads is one in respect of which he could have been legally convicted on the prior occasion or is one in respect of which, by statute, previous proceedings for the same cause are a bar to subsequent proceedings (a).

(p) The pleas of *autrefois convict* or *autrefois acquit* may be pleaded orally, but must be afterwards reduced to writing. For an instance of a plea of *autrefois acquit*, see *R v Shern* (1827), 2 O & P 634, at p 635, and 4 Chitty, Criminal Law, 528. The court, if necessary, will assign counsel to the defendant to draw the plea in a proper form (*R v Chamberlain* (1833) 6 C & P 93). It is sufficient for the defendant to plead that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment (Criminal Procedure Act, 1867 (14 & 15 Vict c 100), s 28).

(q) In *R v Shern* (1827), 2 O & P 634, at p 636, counsel for the prosecution replied *ne tenus*. For form of replication, see *R v Shern*, *supra*.

(r) Evidence Act, 1851 (14 & 15 Vict c 99, s 15), *R v Bird* (1851), 2 Den 94.

(s) As to the cases when a defendant who has been indicted for one offence can be convicted of another, see p 371, *post*.

(t) See Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 45.

(a) In order to succeed on such a plea the defendant must prove that judgment of conviction or acquittal has been given (1 Starkie, Criminal Pleading, 2nd ed., 319). A judgment of conviction that has been reversed as erroneous in law is no bar to a subsequent indictment (*R v Drury* (1849), 3 Car & Kir 196). If a judgment of conviction has been reversed on the facts under the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 4, it seems, although it is not clear, that such a reversal would support a plea of *autrefois acquit*. A discharge of a jury without a verdict being given is no bar to a subsequent indictment (*R v Charlesworth* (1861), 1 B & S 460). A summary conviction before justices for an assault is a bar to a subsequent indictment in respect of the same transaction for wounding etc with intent to maim or to do grievous bodily harm (*R v Walker* (1843), 2 Mood & R 446. Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 45). But if the person assaulted dies after the conviction, the summary conviction is no bar to an indictment for murder or manslaughter (*R v Morris* (1867), L. R. 1 Q O R 90, *R v Friel* (1890), 17 Cox, C C 326). An acquittal on an indictment for murder is a bar to an indictment for

SECT. 2.  
PLEAS.

If the jury find in favour of the defendant on the issue raised by a plea of *autrefois convict* or *autrefois acquit*, he must be discharged unless there is another indictment against him.

manslaughter in respect of the same transaction, so also an acquittal for manslaughter is a bar to an indictment for murder in respect of the same transaction (*Holtcroft's Case*, cited 4 Co Rep 46 b, 2 Hale, P O 246, Russell on Crimes, 6th ed., Vol I, 42, *R v Tancock* (1876), 13 Cox, C O 217). An acquittal on an indictment for murder (and, it seems, also for manslaughter) is a bar to a subsequent indictment for an assault, if there is only one act alleged in the first indictment, but if there are several distinct and independent assaults, and some or any of them did not in any way conduce to the death of the person killed, then an acquittal on an indictment for murder, although all these assaults were included in the indictment, is no bar to an indictment for the distinct and independent assaults which did not conduce to the death (*R v Bird* (1851), 2 Den 94). An acquittal on a charge of felony under the Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 32, for throwing wood upon a railway with intent to endanger the safety of persons travelling or being on the railway is not a bar to an indictment on the same facts under s 34 of the same Act for the misdemeanour of unlawfully endangering the safety of any such person by an unlawful act, or to an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 36, for the misdemeanour of unlawfully obstructing an engine etc on a railway by an unlawful act (*R v Gilmore* (1882), 15 Cox, C O 85). An acquittal on an indictment for rape is not a bar to an indictment for a common assault, although the transaction is the same (*R v Dungey* (1864), 4 F & F 99). An acquittal on an indictment for rape would be a bar to an indictment for attempt to ravish or for an indecent assault (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c 69), s 9). An acquittal on an indictment for an indecent assault is a bar to an indictment for a common assault (*R v Bostock* (1895), 17 Cox, C O 700). An acquittal on an indictment for false pretences is a bar to an indictment for larceny on the same facts (Larceny Act, 1861 (24 & 25 Vict. c 96) s 88), but an acquittal on an indictment for larceny is not a bar to an indictment for false pretences (see *R v Henderson* (1841), Car & M 328, where the point was raised, but it became unnecessary to decide it). An acquittal on an indictment for breaking and entering a dwelling-house and stealing there is not a bar to an indictment on the same facts for breaking and entering a dwelling-house with intent to steal (*R v Vandercomb* (1790), 2 Leach, 708). An acquittal on an indictment charging the defendant with stealing goods alleged to be the property of one person is not a bar to an indictment charging him with stealing the same goods alleged to be the property of another person, although the erroneous allegations in the first indictment might have been amended (*R v Green* (1856), Dears & B 113). An acquittal on an indictment charging larceny at common law and the felonious receiving of goods, when the ground of the acquittal was that the goods were fixtures, is no bar to a subsequent indictment under the Larceny Act, 1861 (24 & 25 Vict. c 96), s 31, for stealing fixtures (*R v O'Brien* (1852), 15 Cox, C O 29, C C R). An acquittal on an indictment against a bankrupt for omitting to disclose part of his property (Debtors Act, 1869 (32 & 33 Vict. c 62), s 11) is not a bar to a subsequent indictment for omitting to disclose the same property and also other property, although such a subsequent indictment ought not, except in very peculiar circumstances, to be preferred, and the judge in such a case would in the absence of peculiar circumstances, advise the jury to acquit (*R v Champneys* (1837), 2 Mood & R 26). An acquittal before a court that had no jurisdiction to try the offence charged is not a bar to a subsequent indictment before a court that has jurisdiction (2 Hawk P. O., c 35, ss 3, 4, see *R v Bitton* (1833), 6 O & P 92). An acquittal before a court of competent jurisdiction in a foreign country is a bar to a subsequent indictment here (*R v Roche* (1775), 1 Leach, 131, *R v Hutchinson* (1677), 3 Keb 785, see *Beak v Thyrioket* (1688), 3 Mod Rep 144, Russell on Crimes, 6th ed., Vol I, 52, n), as to a copy of the record in such a case, see Evidence Act, 1851 (14 & 15 Vict. c 99), s 7. The dismissal of a charge "without prejudice" is a bar to subsequent proceedings for the same offence (*Great Southern and Western Rail Co v Goding*, [1908] 21 R. 429).

## SECT 2

## Pleas.

Pleading  
over

If the jury find against the defendant and the charge is one of felony, he is allowed to "plead over," that is, to plead not guilty. In misdemeanours he cannot, strictly speaking, plead over, but the court may allow him to withdraw his special plea and plead not guilty(b).

SUB-SECT 2—*The General Issue*Pleading  
generally

**693.** If no special plea has been pleaded, or if a special plea has been pleaded and the issue on it has been decided against the defendant and he has been allowed to plead over, the defendant is called upon to plead generally to the indictment. He can plead either guilty or not guilty.

Plea of not  
guilty

By a plea of not guilty the defendant, if he has no privilege of peerage, thereby "puts himself upon the country" for trial, and the court must thereupon order a jury to be called in the usual manner for the trial of the defendant(c).

Application  
for postpone-  
ment of trial

**694** After plea pleaded, and before the jury are called, an application may be made for the postponement of the trial(d). Such a postponement may be ordered on an application made at the instance of either the prosecution or the defendant(e).

(b) See *R v Gilmore* (1832), 15 Cqx, C C 86, 88.

(c) Criminal Law Act, 1827 (7 & 8 Geo 4 c 2b), s 1.

(d) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 27.

(e) The application should be supported by an affidavit (*R v Savage* (1843), 1 Car & Kir 75, *R v Macarthy* (1842), Car & M 625, *R v Palmer* (1834), 6 C & P 652). The grounds on which postponement has been granted are—the absence or illness of a material witness as to the facts (*R v Hunter* (1829), 3 C & P 591, *R v Bowen* (1840), 9 C & P 509, *R v Savage* (1843), 1 Car & Kir 75, *R v Macarthy* (1842), Car & M 625, *R v Palmer* (1834), 6 C & P 652, *R v Beardmore* (1837), 7 C & P 497, *R v Parish* (1837), 7 C & P 782, *R v Lawrence* (1866), 4 F & F 901), or the existence of great excitement on the subject of the trial in the neighbourhood of the place of trial (*R v Bolam* (1839) 2 Mood & R 192, *R v Jolliffe* (1791), 4 Term Rep 285), the absence of a witness as to character merely is no ground for postponing the trial (see *R v Jones* (1806), 8 East, 31, at p 34). Postponement will not be granted to enable the defence to make inquiries as to the evidence of fresh witnesses for the prosecution who were not called before the committing justices (*R v Johnson* (1847), 2 Car & Kir 354). Formerly, where a material witness was a child who was incapable of understanding the nature of an oath, a trial was sometimes postponed to give opportunities for the instruction of the witness (see *R v White* (1786), 1 Leach, 430, *R v Wade* (1825), 1 Mood C C 86, *R v Williams* (1835), 7 C & P 320, *R v Milton* (1841), 11 Ciro Cas 16, *R v Nicholas* (1846), 2 Car & Kir 246), but the provisions of the Children Act, 1908 (8 Edw 7, c 67), s. 30, have probably now made such postponement in many cases unnecessary. The prisoner may at the discretion of the court, if the trial is postponed, be detained in custody or be admitted to bail or discharged on his own recognisances (*R v Beardmore* (1836), 7 C & P 497, *R v Parish* (1837), 7 C & P 782, *R v Osborn* (1837), 7 C & P 799, *R v Crouse* (1829), 4 C & P 251). If a defendant is indicted at the assizes next following his commitment, and the trial is postponed because of the illness of a material witness, the trial may be again postponed at the next assizes on a similar ground, in spite of the provisions of the Habeas Corpus Act, 1679 (31 Car 2, c 2), s. 6 (*R v Bowen* (1840), 9 C & P 509). It is not usual to order the defendant to pay the costs of the prosecution on a postponement, if the application is by the defendant, or to order the prosecution to pay the defendant's costs, if the application is by the prosecution (*R v Hunter* (1829) 3 C & P 591, *R v Crouse* (1829), 4 C & P 251).

SECT. 3.—*The Petty Jury*SUB-SECT. 1.—*Calling the Jury.*SECT. 3.  
**The Petty  
Jury**

**695.** After the defendant has pleaded not guilty, if the parties are ready to proceed with the trial, the next step in the proceedings is to call a petty jury (*f*)

The sheriff receives a precept from the clerk of the peace in the case of quarter sessions, or from the justices of assize in the case of assizes, to summon to the court a sufficient number of duly qualified jurors (*g*)

It is his duty to summon the jurors and to return their names, with their addresses and occupations, on the panel or piece of parchment which he delivers to the clerk of the court (*h*)

The usual course is for the clerk of the court first to call over all the names of the jurors in the panel, when those who do not answer to their names are liable to be fined by the court

The clerk of the court then calls the names of twelve jurors who have answered to their names, and summons them to take their places in the jury box (*i*)

A jury is not properly constituted until all the twelve persons serving on it are sworn or have taken an affirmation to try the issue raised by the defendant's plea of not guilty.

SUB SECT. 2 — *Challenges*

**696.** On the trial of an indictment for felony, before the jurors are sworn, the defendant and the Crown must be allowed the opportunity of challenging (*i e*, objecting to) the jurors who are called to serve

**697** Challenges to jurors are of two kinds, challenges to the array (*i e*, to the whole number of jurors in the panel) and challenges to the polls (*i e*, to individual jurors)

A challenge to the array must be before any juror is sworn, a

(*f*) A petty jury is one that tries the issues of fact in criminal cases, as opposed to a grand jury, which finds the indictments.

(*g*) See Juries Act, 1825 (6 Geo 4, c 50), s 20, and title JURIES. A special jury cannot be had in a case of felony. In a case of misdemeanour a special jury may be obtained, when the record is in the King's Bench Division (see *ibid*, s 30, Juries Act, 1870 (33 & 34 Vict c 77), s 17). Persons qualified to serve as special jurors are liable to serve on petty juries in criminal cases.

(*h*) A printed panel of the jurors summoned to the assizes is to be made seven days before the commission day, and to be kept in the office for inspection, a printed copy of the panel is to be delivered to any party requiring the same on the payment of 1s (Common Law Procedure Act, 1852 (15 & 16 Vict c 76), s. 106). Persons accused of treason are entitled to have a copy of the panel delivered to them two days at the least before their trial, see Treason Act, 1695 (7 & 8 Will. 3, c 3), s 7. As to amendment of the panel by the judge, see *R v Phillips* (1868), 11 Cox, C C 142.

(*i*) It is not necessary that the names should be called in the order in which they stand in the panel (*Mansell v R* (1857), Dears & B 375). If the clerk of the court calls into the jury box A B, whose name is in the panel, and Y Z, whose name is also in the panel, goes into the jury box and is sworn in the name of A. B and sits with the other jurors at the trial of a prisoner, and the prisoner is convicted, the mistake is not a ground for quashing the conviction (*R v Mellor* (1858), Dears & B 468).

## SECT. 3

**The Petty Jury**

Challenge to the array

challenge to the polls before the individual juror who is challenged is sworn (*k*)

**698** A challenge to the array is allowed "for favour," *i.e.*, on the ground of any partiality in the sheriff, under-sheriff, or other officer concerned in the summoning and return of the jury, *as*, for instance, if such officer is the prosecutor or is related to either party, or if any dispute is pending between such officer and either party, or if such officer has been concerned as counsel or solicitor or in some such capacity for either party in the same matter (*l*)

A challenge to the array must be in writing and must state particularly the cause of challenge, and the other party may plead *or demur* to the challenge (*m*)

When the challenge is pleaded to, the court appoints two impartial persons, called "triers," to try the cause of challenge (*n*).

If the triers decide in favour of the challenge, the array is quashed against the sheriff or other officer who has returned it, and the coroner is ordered immediately to return a fresh panel.

If there is a challenge to the array returned by the coroner, and the array is quashed, the court appoints two persons, called "electors" (*i.e.*, electors), to return a fresh panel, to this array no challenge is allowed (*o*)

Challenges to the polls

**699** Challenges to the polls are either peremptory or for cause. Peremptory challenges, for which no cause need be shown, are

(*k*) See also title JURIES. Neither challenges to the array nor challenges to the polls can be taken until a full jury has appeared (*R v Edmonds* (1821), 4 B & Ald 471, at p 473). The challenge to the polls must be before the juror "comes to the book to be sworn" and before he is sworn, *i.e.*, before a juryman takes the book in his hand at the direction of the court, or, it seems, if he affirms or takes the oath in the Scotch form, or in any other form except the usual one, before the clerk of the court begins to read over the form of affirmation etc (see *R v Frost* (1839), 9 C & P 129, at p 137, *R v Brundeth* (1817), 32 State Tr 755, at 770, *R v Georgetti* (1862), 4 F & F 546). If a juror is unchallenged and is sworn, an objection cannot afterwards be taken to him on the ground of partiality (*R v Wardle* (1842), Car & M 617). After verdict the objection cannot be taken that one of the jurors sworn was not returned as a juror (Criminal Law Act, 1826 (7 Geo 4, c 64), s 21, see *R v Metcalfe* (1848), 3 Cox, C C 220, *R v Phillips* (1868), 11 Cox, C C 142). *Quære* whether the last-mentioned Act meets the case of a person who is not competent to serve on a jury acting as a juryman. In *R v Tremearne* (1826), 5 B & C 254, decided before the passing of the Act, this was held to be a mis-trial. In *R v Rothwell* (1893), cited in *Ex parte Morris* (1907), 72 J P 5, a rule nisi for a *certiorari* to quash an indictment because a juror was under age was discharged on the ground that the objection ought to have been taken at the time of the trial.

(*l*) Co Litt. 156 a, Rac Abr Juries, E, 1, *R v Edmonds* (1821), 4 B & Ald 471, *R v Sheppard* (1773), 1 Leach, 101, *R v Dolby* (1821), 1 Car & Kir 238, *R v O'Doherty* (1818), 6 State Tr (N s) 831, *R v Smith O'Brien* (1848), 7 State Tr (N s) 1, at p 20, *R v Mitchel* (1848), 6 State Tr (N s) 599, *R v Duffy* (1848), 7 State Tr (N s) 795, *R v O'Connell* (1843-4), 5 State Tr (N s) 69, *R v Burke* (1867), 10 Cox, C C 519, *Mulcahy v R* (1868), L R 3 H L 306.

(*m*) *R v Edmonds* (1821), 4 B & Ald 471, at p 474, see *R v Hughes* (1843), 1 Car & Kir 235. For the form of a challenge to the array, see *R v Smith O'Brien*, *supra*, *R v O'Connell*, *supra*.

(*n*) See *R v Dolby*, *supra*.

(*o*) Co Litt. 158 a.

allowed to the defendant to the number of thirty-five in treason (*p*) and twenty in felony (*q*) A defendant on a charge of misdemeanour has no peremptory challenge

SECT. 2.  
The Petty  
Jury

The Crown has no peremptory challenge in any case, but may challenge as the names are called over, and is not bound to show the cause of challenge until the panel is gone through, a defendant on a charge of misdemeanour or a defendant on a charge of felony whose peremptory challenges have been exhausted may follow the same course (*r*)

**700** When a juror has been challenged for cause, the court appoints two to try the challenge (*a*)

Challenge  
for cause

The causes for challenge are that the juror called is an alien or a minor or not qualified to serve as a juror (*b*), or has some personal defect which renders him incapable of discharging the duty of a juror, or that he is not impartial (*c*), or that he has served on the coroner's jury or on the grand jury in respect of the same matter (*d*).

If the cause for challenge is allowed, the juror is ordered to stand aside and a fresh juror is called (*e*).

**701** If several prisoners are indicted together, they may join in their challenges and may be tried together, unless the judge thinks fit that they should be tried separately (*f*) If they sever in their challenges, each prisoner has a separate right of challenging peremptorily and for cause (*g*)

Challenges by  
co-defen-  
dants.

(*p*) Treason Act, 1695 (7 & 8 Will 3 c 3), s 2, but only twenty when the treason charged is compassing the King's death, or any of the similar offences set out in the Treason Act 1800 (39 & 40 Geo 3, c 93), or the Treason Act, 1842 (5 & 6 Vict c 51), ss 1, 2

(*q*) Juries Act, 1825 (6 Geo 4, c 60), s 29, *Gray v. R* (1844), 11 O1 & Fin. 427, *H L. v. Levinger v. R* (1870), L R 3 P C 242

(*r*) *R v Horne Tooke* (1794), 25 State Tr 1, at 25, per LIND, CB, *R v Frost* (1839), 4 State Tr (N S) 86, at 123, *Mansell v R* (1857), 10 M & B 375, *R v Blakeman* (1850), 3 Cur & Kir 97, *R v McGowan* (1858), cited in *R v McCurtie* (1859), 11 I C L R 188, at p 206

(*a*) Co Intt 158 a

(*b*) See title JURIES If a person summoned is a peer, that is a good cause of challenge on the trial of a commoner (2 Hawk P C, c. 43, s 11) The fact that a juror is over the age of sixty is not a good cause of challenge (*Mulcahy v R* (1868), L R 3 H L 306)

(*c*) See *R v Geach* (1840), 9 C & P 499, *R v Edmonds* (1821), 4 B & Ald 471, *R v Cook* (1696), 13 State Tr 311, 313, *R v Swain* (1838), 2 Mood & R 112, *R v Martin* (1848), 6 State Tr (N S) 926, *R v O'Conly* (1798), 26 State Tr 1191, at 1227

(*d*) See *R v Snow* (1776), 1 Leach, 152, n *R v Sullivan* (1838), 8 Ad & El. 831, 25 Edw 3, stat 5, c 3

(*e*) If the panel is exhausted, the court may of its own accord order the sheriff or other officer to return a fresh panel immediately (1 Chitty, Criminal Law, 508)

(*f*) *R v Ram* (1893), 17 Cox, C C 610 There may be cases where the trial of several prisoners together may be prejudicial to the interests of the individual prisoner, such a joint trial might lead to a conviction in such circumstances that there is a miscarriage of justice, which would justify the Court of Criminal Appeal in reversing the conviction (see *R v Dabille* (1908), 1 Cr App. Rep 155).

(*g*) See Post 106, 2 Hale, P C 268 *Quare* whether the effect of this is not that the prisoners who sever in these challenges must be tried separately. But

**SECT. 3**  
**The Petty**  
**Jury**

Juror  
objecting  
to serve  
  
Administer  
ing oaths or  
affirmation  
to jury

**702** An unqualified juror, although he is not challenged by either party, may object to serve, and, if the court finds that he is not qualified, he will be ordered to stand aside (*h*).

**SUB SECT 3—Swearing the Jury**

**703** When a full jury of twelve men who have not been challenged, or in respect of whom there is no cause for challenge, have been called, the next step is to swear them (*i*). The oath or affirmation is administered by any officer of the court deputed for that purpose (*k*).

Giving the  
prisoner in  
charge to  
the jury

**704** The clerk of the court, if the charge is one of felony, then states the effect of the indictment, or that part of it on which the defendant has been arraigned, to the jury, and gives the prisoner in charge to them. In misdemeanours, as the defendant is entitled to a copy of the indictment, it is not necessary to state its effect, and he is not given in charge to the jury (*l*).

At the assizes, but not at quarter sessions, a proclamation is made at this stage inviting anyone who can inform the court of any crimes committed by the prisoner at the bar to come forward (*m*).

**SECT 4—The Hearing.**

Admission of  
the public

**705** As a general rule all persons have a right to be present in court, provided there is sufficient accommodation and there is no disturbance of the proceedings. It is usual, where cases involving indigent details are called on, to direct females and boys to leave the court, but if an adult woman should insist on being present at the hearing of a case, there is probably no power to prevent her being present. It is expressly provided by statute (*n*) that, when a person who in the opinion of the court is under sixteen is called as a witness in any proceedings in relation to an offence against or

see *R v Fisher* (1818), 3 Cox, C C 68, where PLATT, B, said it was an "ill practice to allow the challenges to be severed" for the purpose of giving each prisoner a separate trial. If two or more persons are jointly indicted, each may apply to be tried separately, and such an application should be granted if the applicant is likely to be prejudiced by a joint trial (*R v Dibble* (1908), 1 Cr App R. 155).

(*h*) *R v Grey* (1682), 9 State Tr 127, *R v Cook* (1696), 13 State Tr 311, 313, 315. A juror who has been called to serve on a trial for murder, and who states that he has conscientious objections to capital punishment, may be ordered to stand by (*Mansell v R* (1857), *Dears & B* 375).

(*i*) A juror who objects to be sworn may affirm (Oaths Act, 1888 (51 & 52 Vict c 46), s 1).

(*k*) It is the practice on a charge of felony to swear each juror separately, and on a charge of misdemeanour to swear four at a time. In felony the form of oath is, "You shall well and truly try and true deliverance make between our sovereign lord the King and the prisoner at the bar, whom you shall have in charge and true verdict give according to the evidence, so help you God" (1 Chitty, Criminal Law, 551, see *R v Dowling* (1793), 5 Term Rep 311, 313). In misdemeanours the form is, "You shall well and truly try the issue joined between our sovereign lord the King and the defendant, and true verdict give" etc. (Dickinson, Quarter Sessions, 5th ed., 508).

(*l*) 1 Chitty, Criminal Law, 555.

(*m*) For the form of the proclamation, see 1 Chitty, Criminal Law, 553.

(*n*) Children Act, 1908 (8 Edw 7, c 67), s 114.



SECT 4.  
The  
Hearing.

any conduct contrary to decency or morality, the court may order the exclusion of all persons not being members or officers of the court or parties, their counsel or solicitors, and the *bond fide* representatives of a newspaper or news agency. No child (i.e., anyone under fourteen) other than an infant in arms may be present during the trial of any person charged with such an offence or during any preliminary proceedings relating to such offence, and, if he is present, he must be ordered to be removed, unless he is the person charged with the offence or his presence is required as a witness or otherwise for the purpose of justice, and then he can only remain so long as his presence is so required (o)

Except in the cases above referred to, and in cases under the Incest Act, 1908 (p), it does not appear that a judge trying a criminal case has any power to exclude the public in general and to hear a case *in camera*.

#### SUB SECT 1 — Case for the Prosecution

**706** Counsel for the prosecution opens the case for the prosecution to the jury by giving the outline of the evidence and the leading features of the case (q), and then calls his witnesses

Case  
for the  
prosecution.

When a witness is called an objection may be taken as to his competency, he may then be examined as to his competency before he is sworn (r)

If there is no such objection, or if it is made and disposed of, each witness for the prosecution in turn takes the oath or affirmation, and is examined in chief, and may be cross-examined by the defendant or his counsel, and, if cross-examined, may be re-examined by the counsel for the prosecution

The rules as to the examination, cross-examination, and re-examination of witnesses are, with some exceptions, the same in criminal as in civil trials (s).

(o) Children Act, 1908 (8 Edw 7, c 67), s 115 This section does not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment

(p) 8 Edw 7, c 45 See p 619, *post*

(q) See *R v Gascoine* (1837), 7 C & P 772, *R v Jackson* (1837), 7 C & P 773, *R v Bowler* (1837), 7 C & P 773, *R v Deering* (1831), 5 C & P 165, *R v Martel* (1837), 7 C & P 773, *R v Swathins* (1831), 4 C & P 548, *R v Orrell* (1835), 7 C & P 771, *R v Davis* (1837), 7 C & P 785, *R v Courtenay* (1840), 9 C & P 362, *R v Morgan* (1852), 6 Cox, C C 116, *R v Green* (1861), 8 Cox, C C 509, *R v Deuling* (1848), 7 State Tr (N S) 381, at 390 *R v Duffy* (1848), 7 State Tr (N S) 795, at 917 The prosecution is always conducted by counsel at the assizes and Central Criminal Court, and at most courts of quarter sessions, but there are a few courts of quarter sessions where solicitors have audience A prosecutor in person is never allowed to address the jury (*R v Brice* (1819), 2 B & Ald 606) In *R v Gurney* (1869), 11 Cox, C C 414, COCKBURN, C J, refused to allow a prosecutor to conduct in person a charge of conspiracy

(r) This is called examining a witness on the *voir dire*, if a witness who is incompetent to give evidence (see p 400, *post*) is called, the objection is taken on the *voir dire*, but may also, it seems, be taken afterwards (see *R v Moore* (1892), 61 L J (M C) 80) As to securing the attendance of witnesses, see p 321, *ante*, and title EVIDENCE.

(s) See p 377, *post*, and title EVIDENCE As to the unsworn evidence of children, see p 408, *post* For instances in criminal cases of the general rules as regards

**SMOY. 4.**  
**The**  
**Hearing.**

Witnesses  
ordered out  
of court

All witnesses  
on the back  
of the  
indictment  
should be  
called.

**707.** Witnesses may be ordered out of court at the request of either party (t).

**708** All the witnesses whose names are on the back of the indictment should be called by the prosecution. Even if it is not proposed to examine a witness whose name is on the back of the

examination in chief as to the inadmissibility of leading questions on material points in dispute, see *R v Rosewell* (1884), 10 State Tr 190, *R v Watson* (1817), 2 Stark 116, 128, *R v De Berenger* (1814), Starkie on Evidence, 4th ed., 167, n., *R v Blackburn* (1853), 6 Cox, C O 338. As to cross-examination and contradiction of such witness by the party who calls him, if he turns out to be hostile, see Criminal Procedure Act, 1865 (28 & 29 Vict c 18), s 3, *R v Ball* (1839), 8 C & P 746, *R v Chapman* (1838), 8 O & P 558, *R v Oldroyd* (1805), Russ & Ry 88, *R v Little* (1883), 15 Cox, C O 319, *R v Dibble* (1908), 1 Cr App Rep 155. As to a witness refreshing his memory, see *R v Mullins* (1848), 3 Cox, C O 526, *R v Williams* (1853), 6 Cox, C O 343, *Guinea's Case* (1841), 1r Circ Cas 167, *R v Langton* (1876), 2 Q B D 296, C O R., *R v Dexter* (1899), 19 Cox, C O 360, *R v Robinson* (1897), 61 J P 520, *R v Harvey* (1869), 11 Cox, C O 546, at p 547. As to expert witnesses with regard to handwriting, see *R v Williams* (1838), 8 O & P 434, *R v Silverlock*, [1894] 2 Q B 766, C O R., Criminal Procedure Act, 1865 (28 & 29 Vict. c 18), s 6. As to expert witnesses with regard to insanity and other medical questions, see *R v Wright* (1821), Russ & Ry 456, *R v Searle* (1831), 1 Mood & R 75, *McNaughten's Case* (1843), 10 Cl & Fin 200, H L., at pp 203, 211, *R v Frances* (1849), 4 Cox, C O 57. As to cross-examination, see *R v Hardy* (1794), 24 State Tr 199, at 609, 755, *R v Watson* (1817), 2 Stark 116, at p 135, *R v Bernard* (1858), 1 F & F 210, 249, *R v Ramsden* (1827), 2 O & P 603, *R v Duncombe* (1838), 8 C & P 369, *R v Watson* (1834), 6 O & P 653. As to cross-examination with regard to depositions and other previous statements, see Criminal Procedure Act, 1865 (28 & 29 Vict. c 18), ss. 4, 5, *R v Riley* (1806), 4 F & F 964, and see p 385, *post*. As to cross-examination with regard to previous convictions, see p 384, *post*, and as to restrictions on the cross-examination of a defendant who gives evidence, see p 404, *post*. As to re-examination, see *Queen Caroline's Case* (1820), 2 Brod & Bing 284, at p 294, *R v Beezley* (1830), 4 C & P 220, *R v Chambers* (1848), 3 Cox, C O 92. As to the judge recalling and asking a question of a witness for the prosecution after the close of the case for the prosecution, see *R v Remnant* (1807), Russ & Ry 136, and as to the defendant cross-examining a witness so recalled, see *R v Watson* (1834), 6 C & P 653. As to a judge calling a witness not called by either party (as in *Coulson v Dunbrough*, [1894] 2 Q B 316, C A.), see *R v Chiburn* (1898), 62 J P 232, and as to the cross-examination of such a witness, see *R v Chiburn*, *supra*.

(t) It is in the discretion of the court whether the order should be made (*R v Vaughan* (1676), Holt (x b), 689, *R v Cook* (1696), 13 State Tr 311, 348, *R v Goudere* (1741), 17 State Tr 1003, at 1015, *Selfe v Isaacson* (1658), 1 F & F 194). The application may be made at any time (*Southey v Nash* (1837), 7 O & P 632, *R v Murphy* (1837), 8 O & P 297, at p 307). The prosecutor was included in the order in *R v Newman* (1852), 3 Car & Ku 252, at p 260, as it was proposed to examine him as a witness, *sed quære*. The defendant on a charge of felony must remain in court throughout the trial, unless he is removed for disorderly conduct (see *R v Berry* (1897), Roscoe, Criminal Evidence, 13th ed., 165, 166, *R v Brown* (1906), 41 L J 612, Stephen, Digest of Criminal Procedure, 194). A solicitor for either party is entitled to remain in court, although it is proposed to examine him (*Pomeroy v. Buddale* (1826), Ry. & M 430). Expert witnesses are generally excluded from the order. If a witness disobeys the order and remains in court, he may be punished for contempt, but his evidence, though open to observation, is not thereby made inadmissible (*Chandler v. Horne* (1812) 2 Mood & R. 423, *Cobbett v Hudson* (1852), 1 E. & B. 11, 14, *Cook v Nathercole* (1835), 6 O & P 741, *Thomas v. David* (1836), 7 O & P. 350, *R v Colley* (1829), Mood & M 329). At the Central Criminal Court it is the regular practice for witnesses to be kept out of court until they are examined.

SECT. 4.  
The  
Hearing.

indictment, counsel for the prosecution should, unless there are exceptional reasons to the contrary, place him in the witness-box so that the defendant may have an opportunity of cross-examining him (u).

**709** The prosecution may call witnesses who were not examined before the committing justices and whose names are not on the back of the indictment. Notice of intention to call such witnesses should be given to the defendant, and copies of their proofs should be supplied to the defendant and to the court (v). But, except in charges of treason, to which special rules apply (w), the failure to give such notice and copies of proofs does not render the additional evidence inadmissible (x).

Witnesses not  
on the back  
of the indict-  
ment.

**710** If the deposition of a witness has been taken on the preliminary inquiry before the committing justices (y), and the witness is at the time of the trial dead or so ill as not to be able to travel, or is kept out of the way by the procurement of the defendant (z), upon proof that the deposition was taken in the presence of the defendant and that he or his counsel or solicitor had opportunity to cross-examine the witness, and that the witness is dead or so ill as not to be able to travel, or is kept out of the way by the procurement of the defendant, the deposition, if it purports to be

When  
depositions  
of a witness  
may be read.

(u) *R v Simmons* (1823), 1 O & P 84, *R v Buxley* (1830), 4 O & P 220, *R v Bull* (1839), 9 O & P 22, *R v Vincent* (1839), 9 O & P 91, at p 106, *R v Bodle* (1833), 6 C & P 186, *R v Holden* (1838), 8 O & P 606, *R v Woodhead* (1847), 2 Car & Kir 520, *R v Edwards* (1848), 3 Cox, O O 82, *R v Thompson* (1876), 13 Cox, O O 181. If the counsel for the prosecution puts a witness in the box to enable the defendant to cross-examine him, and the defendant does cross-examine him, then counsel for the prosecution can re-examine the witness, but only on the points touched by the cross-examination (*R v Harris* (1834), 7 O & P 581, *R v Beeley*, *supra*). The defendant is entitled to inspect the indictment to see what witnesses' names are on the back of it (*R v Connor* (1845), 1 Cox, O O 233, *i v Lacey* (1848), 3 Cox, O O 517); but the court has no power to oblige a prosecutor to give to the defendant the names and addresses of the witnesses on the back of the indictment (*R v Gordon* (1842), 12 L J (M O) 84).

(v) *R v Ward* (1848), 2 Car & Kir 759. As to securing attendance of witnesses, see p 321, *ante*. See also title EVIDENCE, and *R v Baines*, [1909] 1 K B 268.

(w) Treason Act, 1708 (7 Ann c 21), s 14, and *R v Frost* (1839), 4 State Tr. (N S) 85.

(x) *R v Greenslade* (1870), 11 Cox, O O 412, disapproving of *R v Stigmans* (1867), 10 Cox, O O 552, which is inaccurately reported. See *R v Gunnor* (1845), 1 Cox, O O 233, which was decided before the Indictable Offences Act, 1848 (11 & 12 Vict c 42), when the defendant had no right to copies of the depositions. The failure to give notice and copies is a matter for observation, and might be a ground for postponing the trial (*R v Flannagan* (1884), 15 Cox, O O 403).

(y) Under the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17.

(z) The Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17, which now governs the admissibility in evidence of depositions taken under that Act, contains no provision for the deposition being read, if a witness is kept out of the way by the procurement of the defendant; but if a witness is so kept out of the way, that is a ground for the deposition being used against the defendant who procures the absence of the witness, but not against any other co-defendant who is no party to the procuring (*R v Scarfs* (1851), 17 Q. B. 238, see *R v. Austen* (1856), 7 Cox, O O 55, O O B).

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**Hearing**

signed by the justices by or before whom it purports to have been taken, may be read in evidence without further proof (a).

The deposition must have been taken at an inquiry into the same transaction as that which forms the subject-matter of the trial, but the charge need not be the same (b)

Depositions  
of witnesses  
taken before  
a coroner's  
jury

**711** The depositions of witnesses taken before a coroner's jury may be used in the cross examination of the witnesses who made them, but cannot be used as direct evidence except to contradict the evidence of such witnesses, when such contradiction is permissible (c)

Statement of  
witness  
dangerously  
ill taken  
before a  
justice

**712** The statement taken by a justice (d) of a person dangerously ill may be used in evidence either for or against a defendant on his trial without further proof, if it purports to be signed by the justice by or before whom it purports to be taken and if the court is satisfied by evidence that the witness who made the statement is dead, or that there is no reasonable probability that he will be ever able to travel or to give evidence, and that reasonable notice in writing of the intention to take the statement was served upon the person against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the statement (e)

(a) Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17 As to the meaning of "so ill as not to be able to travel," see *R v Riley* (1851), 3 Car & Kir 116, *R v Wicker* (1854), 18 Jur 252, *R v Cockburn* (1857), Dears & B 203, *R v Day* (1852), 6 Cox, O C 55, *R v Wilson* (1861), 8 Cox, C C 453, *R v Stephenson* (1862), Le & Ca 163, *R v Utner* (1850), 4 Cox, O C 442 *R v Farrell* (1874), L R 2 O R 116, *R v Thompson* (1876), 13 Cox, O C 181, *R v Groucher* (1862) 3 F & F 285, *R v Wellings* (1878), 3 Q B D 426, O O R *R v Goodfellow* (1879), 14 Cox, C C 326, *R v Hurney* (1850), 4 Cox O C 441, *R v Marcellus* (1900), 17 T L R 164 The question whether the evidence is sufficient to prove the conditions precedent to the admission of the depositions is one for the determination of the presiding judge (*R v Stephenson* (1862), Le & Ca 163) The evidence of a doctor to prove illness is not indispensable (*R v Riley, supra, R v Wellings supra*), but is desirable (see *R v Wilton, supra, R v Butcher* (1900), 64 J P 808)

(b) *R v Beeston* (1854), Dears O C 405, *R v Williams* (1871), 12 Cox, C C 101

(c) See p 385, *post* The practice formerly was to admit such depositions as direct evidence, if they were taken in the presence of the defendant, see *R v Rigg* (1866), 4 F & F 1085, Taylor on Evidence, 10th ed, I, 372 The coroner's depositions must be signed by the coroner and also by the witness (Coroners Act, 1887 (50 & 51 Vict c 71), s 4 (2)). In *R v Butcher* (1900), 64 J P 808, DARLING, J, is reported to have said that coroners' depositions now stand on the same footing as depositions taken before justices, and that the provisions of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s 17, apply to them But those provisions, being expressly confined to cases of depositions before justices, cannot, it seems, apply to depositions taken before a coroner

(d) Under the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6 (see p 327, *ante*)

(e) *Ibid* See *R v Peacock* (1870), 12 Cox, O C 21, *R v Quigley* (1868), 18 L. T. 211, *R v Shurmer* (1866), 17 Q B D 323, O C R, *R v Curtis* (1904), 21 T L R 87, *R v. Rees, Times* 20th December, 1888 p 10 A statement of a dying person taken at a hospital in compliance with the requirements of the Indictable Offences Act, 1848 (11 & 12 Vict. c 42), s 17, may be admitted in evidence, although it is not admissible under the Criminal Law Amendment Act, 1867 (30 & 31 Vict c 35), s. 6, see *R v. Katz* (1900), 64 J P 807.

SECT 4  
The  
Hearing

Deposition  
of a child.

**713.** The deposition of a child taken under statutory authority (*f*) is admissible in evidence for or against a person accused of certain offences with regard to children (*g*), if the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to its life or health; such evidence is admissible without further proof, if it purports to be signed by the justice by or before whom it purports to be taken, and if it is proved that reasonable notice of the intention to take the deposition was served upon the person against whom it is proposed to use it as evidence and that that person or his counsel or solicitor had or might have had, if he had chosen to be present, an opportunity of cross-examining the child (*h*).

**714** When the counsel for the prosecution has called all his witnesses and the defendant or his counsel has had an opportunity of cross-examining them, counsel for the prosecution generally puts in the statement of the defendant made before the justices and closes his case

Closes of  
case for the  
prosecution

SUB-SLOT 2—*The Defence*

**715** The defendant or his counsel may thereupon submit that there is no case to go to the jury or that there is a variance that cannot be amended between the indictment and the evidence

Submission  
of no case.

**716** If there is no such submission, or if it is made and decided against the defendant (*i*), it is for the defendant at this stage, if he wishes to give evidence but calls no other witnesses, to give his evidence. If the defendant goes into the witness-box, he is liable to be cross-examined (*k*) on behalf of the prosecution, and also by or on behalf of any co-defendant with whom he is being tried and to whom his evidence is hostile (*l*) he may then be re-examined by counsel or by himself

The defendant  
led as a  
witness.

(*f*) Children Act, 1908 (8 Edw 7, c 67) (see p 328, *ante*), Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17

(*g*) *I.e.*, offences of cruelty within the meaning of the Children Act, 1908 (8 Edw 7, c 67), or any of the offences mentioned in the First Schedule to that Act (see these set out p 408, *post*)

(*h*) Children Act, 1908 (8 Edw 7, c 67), s 29. As to other instances of depositions in criminal trials, see note (*b*), p 387, *post*

(*i*) The judge may of his own initiative stop the case if he thinks there is no evidence to go to the jury but he need not do so (*R v George* (1908), 23 T L R 66, O C A). If there is such a submission and there is no case to go to the jury, it is the duty of the judge to direct a verdict of not guilty (*R v Leach* (1909), 2 Cr App Rep 72)

(*k*) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 2. As to the limit of such a cross-examination see p 404, *post*. As to a prisoner reading a statement in the witness-box, or having a statement read for him by someone else, see *R v Elliott* (1909), 2 Cr App Rep 171. A prisoner should be distinctly told that he has a right to give evidence on his own behalf (*R v Warren* (1909), 23 T L R 633)

(*l*) *R v Hadwen*, [1902] 1 K B 482, O O R. If a co-defendant against whom the defendant has not given evidence, puts questions to the defendant on the co-defendant's own behalf, the defendant becomes a witness for the defence of the co-defendant who so examines him (*R v Burdett* (1855), 6 Cox, O C. 458, 460, O. C. R.)

SMO. 4

**The  
Hearing**

When counsel  
for the  
prosecution  
may sum  
up his case

**717** At the close of the defendant's evidence, if the defendant is the only witness for the defence, or if he does not give evidence, at the close of the evidence for the prosecution, counsel for the prosecution may, but only when the defendant is represented by counsel, sum up the case for the prosecution, and in so doing may comment on the evidence of the defendant, if he has given evidence, but if he has not given evidence, may not make any comment on the defendant's failing to give evidence (m)

Case for the  
defence

**718.** After this the defendant or his counsel may address the jury, and if he calls no other witnesses or has not put in any evidence, he has the last word, unless the Attorney-General or Solicitor-General is conducting the prosecution, the defendant, if he has not given evidence on oath, may make a statement not on oath (n)

If there are more defendants than one, they address the jury and cross-examine witnesses in the order in which their names appear on the indictment, or in any order which the judge may think fit (o)

If a defendant intends to call witnesses other than himself, the defendant or his counsel must call such witnesses (p) after opening his case, and these witnesses may be cross-examined by counsel for the prosecution (a)

If there are more co-defendants than one being tried together, and one co-defendant calls evidence which is hostile to another defendant, the co-defendant may cross-examine such a witness (b)

Rebutting  
evidence

**719** After the witnesses for the defence have given their testimony, the evidence is closed, and the court will not allow fresh evidence to be given, but if any matter arises unexpectedly in the evidence called by the defence, such a matter may be answered by rebutting evidence on behalf of the prosecution (c)

(m) Criminal Procedure Act, 1865 (28 & 29 Vict c 18), s 2, *R v Gardner*, [1899] 1 Q B 150, C C R, Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (h), see *R v Derens* (1865), 4 F & F 842, *R v Webb* (1865), 4 F & F 862; *R v Rudland* (1865), 4 F & F 495, *R v Puddick* (1865), 4 F & F 497, *R v Holchester* (1866), 10 Cox, C O 226. But if by reserving his defence before the justices the prosecution have been prevented from investigating the case set up by the defendant at the trial, comment may be made on that circumstance (*R v McNair* (1909), 25 T L R 228, C C A)

(n) See p 402, post

(o) See *R v Barber* (1844), 1 Car & Kir 434, at p 438, *R v Balfour*, Times, 29th October, 1893, p 4

(p) Criminal Procedure Act, 1865 (28 & 29 Vict c 18), s 2. In *R v Nicholson* (1909), 2 Cr App Rep 195, a conviction was quashed by the Court of Criminal Appeal, because witnesses for the defence who had attended at the trial were told that they were not wanted and went away without giving evidence.

(a) It is not usual for counsel for the prosecution to cross-examine witnesses to character, except when there is a previous conviction against the defendant who calls such witnesses.

(b) *R v Woods* (1853), 6 Cox, C O 224, *R v Burdett* (1855), 6 Cox, C O 458, Q. O. R.

(c) *R v Haynes* (1859), 1 F & F 666, *R v Frost* (1839), 4 State Tr (N s) 85, at p 386; *R v Whelan* (1881), 14 Cox, C O 595. If evidence of good character is called on behalf of the defendant, the prosecution may give evidence of bad character (*R v Rutton* (1865), Le & Ca 520), but see *R v Burt* (1861),

**720.** After the close of the evidence for the defence, or if any rebutting evidence is allowed to the prosecution, after the close of such rebutting evidence, the defendant or his counsel may sum up his evidence (*d*), and the counsel for the prosecution has the right of reply (*e*)

SECT. 4.  
The  
Hearing  
—  
Closing  
speeches.

SUB-SECT. 3—*Judge's Summing up.*

**721** After the close of the reply of the counsel for the prosecution the presiding judge sums up the whole case and the evidence to the jury, gives his direction on the matters in issue and on the points of law applicable to these matters (*f*), and may give his opinion on such matters. Although the counsel for the prosecution may not comment on the failure of the defendant to give evidence, the judge, if he thinks right, may do so (*g*).

Judge's  
summing up

SUB-SECT. 4—*View by Jury*

**722** The jury in a criminal trial may have a view of the *locus in quo*, if it is within the same county as that in which the trial takes place and if the court think that a view would be of service to them (*h*).

View by jury

SUB-SECT. 5—*Adjournment*

**723** The court may adjourn the hearing of a criminal case from day to day or for part of a day (*i*)

Adjournment  
of hearing

During such adjournments, in all cases except those of treason, treason felony, and murder, the judge may allow the jury to separate at any time before they begin to consider their verdict (*j*)

Jury when  
allowed  
to separate.

5 Cox, C C 284. It is not usual to give such evidence, except in the case of a previous conviction against the defendant (*R v Hughes* (1813), 1 Cox, C C 14).

(*d*) Criminal Procedure Act, 1865 (28 & 29 Vict c 18) s 2

(*e*) It is not usual for counsel to exercise this right when the only witnesses called are witnesses to character. If there are several defendants and witnesses are called by only one or some of them, there is no right of reply except against the defendants who call evidence (*R v Hayes* (1838), 2 Mood & R 155, *R v Trevells* (1882), 15 Cox, C C 289, *R v Kain* (1883), 15 Cox, C C 388).

(*f*) See Label Act, 1792 (32 Geo 3, c 60), s 2. See *R v Melville* (1900), 2 Cr App Rep 173, *R v Stoddart* (1909), 25 T L R 612, C C A, and p 434, *post*, as to misdirections.

(*g*) *Kops v R*, [1894] A C 650, P C. *R v Rhodes*, [1899] 1 Q B 77, C O R., if a prisoner reserves his defence before the committing magistrate and so prevents the defence set up at the trial being investigated the prosecution may comment on such conduct (*R v McNair* (1908), 25 T L R 228, C O A).

(*h*) *Anon* (1816), 2 Chit. 422, *R v Whalley* (1847), 2 Car & Kir 376, *R v Martin* (1872), 1 L R 100 B 378. Such a view may be had even after the judge's summing up (*R v Martin, supra*). If a view is desired in another county, the indictment must be removed by *certiorari* (see Crown Office Rules, 1906, r 13, *R v Gyde* (1908), 72 J P 501).

(*i*) *R v Castro* (1874), 1 L R 9 Q B 350, at p 356, *R v Hardy* (1791), 21 State Tr 199, 418, by a fiction of law all the days during which one assize or sessions lasts are treated as one day, but see *Whitaker v Wisbey* (1852), 6 Cox, C C 109. As to adjournment for part of a day for the production of evidence or other good cause, see *R v Wenborn* (1842), 6 Jur 267, *R v Foster* (1848), 3 Car & Kir 201, *R v Fernandez* (1861), 2 F. & F 862, n, *R v Tempest* (1858), 1 F. & F 381, *R v Parr* (1862), 2 F. & F. 861, *R v Robson* (1864), 4 F. & F 360; but see now *Juries Detention Act, 1897* (60 Vict c 16).

(*j*) *Juries Detention Act, 1897* (60 Vict c 18), s 1. In cases where the

## SECT 4

**The  
Hearing**

Discharge  
of jury in  
the course  
of a trial

SUB-SECT 6—*Discharge of Jury in the Course of a Trial.*

**724** The judge has power, whenever he deems proper, to discharge a jury in the course of the trial, and to swear a fresh jury and begin the trial of the case again. He is the sole judge of the propriety of such a course (*h*).

If a juror is incapacitated, the jury may be discharged and a fresh jury called, who may be the remainder of the former jury with another added to their number, but the defendant should be given his challenges afresh (*l*), and all the jurors should be resworn; the witnesses should be resworn and their oral evidence taken again (*m*).

SUB SECT 7—*Verdict***Verdict.**

**725** At the close of the judge's summing-up the clerk of the court directs the jury to consider their verdict. They then confer together, and if they appear to have made up their minds, the clerk of the court asks them whether they are agreed on their verdict

judge has no power to allow the jury to separate, if the jury do separate in the course of the proceedings, the result is to make the trial bad, and the proper course is to discharge the jury and swear a fresh one and begin again (*R v Wurd* (1867), 10 Cox, C O 573).

(*h*) This course was pursued in *R v Stevenson* (1791) 2 Leach, 546, *R v Streck* (1826), 2 O & P 413 (prisoner ill) *R v Scalbert* (1794), 2 Leach, 620, *R v Edwards* (1812) Russ & Ry 224 (juror ill), *R v Kinloch* (1716), Foist 16 (where at the request of the defendant a jury was discharged in order that the defendant might withdraw a plea of not guilty and plead to the jurisdiction, *quære*, whether such a course would now be followed, see p 355, *ante*), *R v Stokes* (1833), 6 C & P 151 (the trial was postponed at the request of the defendant owing to the absence of one of his witnesses) *R v Phillips* (1868), 11 Cox, C O 112 (where a juror who had not been summoned was sworn, and see *R v Metcalfe* (1848), 3 Cox, C O 220) *R v Muciae* (1892), Roscoe, Criminal Evidence, 13th ed., 189 (juror unlawfully separating himself from the jury and mingling with the public). It seems that it might be a good reason for discharging the jury, if undue practice had been used to keep witnesses out of the way, or to influence them in giving or withholding their evidence or where witnesses are prevented from giving evidence by sudden accidents (see *R v Chalksworth* (1861), 1 B & S 460, *per* COOKBURN, C J, at p 504). But it is not a good ground for discharging a jury merely that evidence for the Crown is not forthcoming or that a material witness for the Crown refuses to give evidence (*R v Lewis* (1909), 78 L J (K B) 722 C O A, *R v Charlesworth*, *supra*), or that the prisoner has a relation on the jury (*R v Wardle* (1842), Car & M 617). It is not a sufficient ground for discharging a jury that a material adult witness is not sufficiently acquainted with the nature and obligation of an oath. Where in such a case a judge discharged a jury that the witness might have an opportunity of being instructed, the judges considered that the discharge was improper (*R v Wade* (1825), 1 Mood C O 86). As to the discharge of a jury who cannot agree on their verdict, see *Hinsor v R* (1866), L R 1 Q. B 289, *ibid*, 390 Ex Ch, and p 374, *post*. The discharging of a jury is in the discretion of the judge and his exercise of the discretion is not subject to review (*R v Lewis*, *supra*). As to irregularity in the proceedings not discovered till after verdict, see *R v Murphy* (1869), L R 2 P C 535.

(*l*) *R v Edwards*, *supra*, *R v Beere* (1842), 2 Mood & R 472.

(*m*) In *R v Bertrand* (1867), L R 1 P C 520, the Privy Council expressed an opinion that in a case of felony, when a jury who could not agree on their verdict had been discharged and a fresh jury sworn, it was irregular for the judge, even with the consent of the defendant, to read over from his notes the evidence given before the previous jury, this was the course followed in *R v Beere* (1843), 2 Mood & R 472, and in *R v Munson* (1903), 67 J P. Jo 267, but see *R v Laurence* (1909), 25 T. L R 374 (felony), and in *R v Foster* (1836), 7 C. & P. 495 (misdemeanour).



If the foreman says "Yes," the clerk of the court asks them whether they find the defendant guilty or not guilty, and they deliver their verdict through the mouth of their foreman (n), and the verdict is recorded (o)

SECT. 4.  
The  
Hearing.

The verdict may be either a general verdict of guilty or not guilty on the whole charge, or a verdict of guilty on one part of the charge and not guilty on another part, or a special verdict which finds the facts of the case and reserves the legal inference to be drawn from them for the judgment of the court

Different  
kinds of  
verdict.

If several defendants are tried together, the jury may find one or more guilty and others not guilty (p)

**726** A jury cannot at common law convict a defendant of an offence of an entirely different character from that named in the indictment (q), *e g*, if the charge is one of felony, they cannot at common law find the defendant guilty of a misdemeanour, and if the charge is a misdemeanour, they cannot find a verdict of guilty of a felony

Conviction of  
defendant  
of an offence  
different from  
that charged  
in the  
indictment.

They may, however, at common law, convict of a cognate offence of the same character but of a less aggravated nature, if the words of the indictment are wide enough to cover such an offence (r)

(n) See *R v Wooller* (1817), 2 Stark 111. In general the assent of all the jury to the verdict pronounced by the foreman in their presence and hearing will be conclusively inferred, *aliter*, when it is uncertain whether they all heard the verdict (*ibid*). If a verdict is pronounced and one of the jury is so drunk or otherwise incapable that he cannot or does not assent, a conviction in such a case would, it seems, be bad (see *Ex parte Morris* (1907), 72 J P 5)

(o) See 1 Chitty, Criminal Law, 636, for the form of entry. In a misdemeanour by consent of the defendant, the verdict may be pronounced out of court, *e g*, at the judge's house (*R v Woodfall* (1770), 20 State Tr 895, 903). As to amending a verdict after entry, see *R v Virrier* (1840), 12 Ad & El 317.

(p) See as to joint receivers, Larceny Act, 1861 (21 & 25 Vict c 96), s 94. On an indictment for a riot against three or more, if the jury acquit all but two and find two guilty, the verdict amounts to an acquittal of the two, unless the indictment charges them with having made a riot with other persons not being tried (2 Hawk P C, c 47, s 8, *R v Beach* (1809), 2 Cr App Rep 189). The result is similar in a case of conspiracy, if the jury acquit all the defendants but one (*R v Thompson* (1851), 16 Q B 832, *R v Manning* (1883), 12 Q B D 241, *R v Plummer*, [1902] 2 K B 339, O O R.). Where a charge is against several defendants for conspiring together to do several illegal acts, a finding by the jury that one of them is guilty of conspiring with some of the defendants to do one of the acts and guilty of conspiring with other defendants to do another of the acts is bad as amounting to a finding that the defendant is guilty of two conspiracies, whereas the charge is only of one (*O'Connell v R* (1844), 11 Cl & Fin 155, H L.). Where a charge was against eight defendants for conspiring to effect certain objects, and the jury found three of the defendants guilty generally and four of them guilty of conspiring to effect some of the objects and not guilty of conspiring to effect the other objects, the verdict was held to be bad and repugnant (*O'Connell v R*, *supra*).

(g) *R v Thomas* (1875), L R. 2 Q O R 141; *R v. Woodhall*, (1872), 12 Cox, C C 240, *R v Catherall* (1875), 13 Cox, C C 109.

(r) *R v Hollingberry* (1825), 4 B & C 329, *R v Hunt* (1811), 2 Camp 563. On an indictment for murder a defendant may at common law be convicted of manslaughter (*Mackalley's Case* (1611), 9 Co Rep 65 a, 67 b). On a charge of burglary and stealing or of robbery, the jury may find a verdict of larceny (2 Hale, P. C. 302). On a charge of burglary with intent to steal the jury may find a verdict of housebreaking or of stealing in a dwelling-house or of simple larceny (*R v Compton* (1828), 3 C & P 418, *R v. Bullock* (1827) 1 Mood C O.

**F. 4**  
**The**  
**Hearing**

In cases provided for by statute a jury may find a defendant guilty of an offence different in nature from that charged in the indictment (s)

324, n) On a charge of housebreaking a verdict of simple larceny may be found (*R v Brookes* (1842), Car & M. 543, and see *R v Beane* (1820), Russ & Ry 416) On a charge of assaulting, beating, wounding and occasioning actual bodily harm the jury may find a verdict of a common assault (*R v Oliver* (1860), Bell, O C 287, *R v Yeadon* (1861), Le & Ca 81, and see *R v Taylor* (1869), L R 1 O C R 194, and *R v Day* (1870), 11 Cox, O C 505, O C R), but on a charge of feloniously wounding the jury cannot find a verdict of a common assault On a charge of assaulting and having unlawful carnal knowledge of a girl the jury may find a verdict of common assault (*R v Guthrie* (1870), L R 1 O C R 241) On a charge of an indecent assault the jury may find a verdict of a common assault (*R v Bostock* (1893), 17 Cox, O C 700) On a charge of publishing a defamatory libel "knowing it to be false" the jury may find a verdict of merely publishing a defamatory libel (*Boaler v R* (1888), 21 Q. B D 284) On a charge of perjury the jury may find a verdict of guilty of the common law misdemeanour of taking a false oath (*R v Hodgkiss* (1869), L R 1 O C R 212) If two persons are jointly indicted for a joint offence and the jury find them guilty of separate offences, judgment cannot be given against both, but on a pardon or *nolle prosequi* being entered against one, judgment may be given against the other (*R v Hempstead* (1818), Russ & Ry 344) The jury may acquit one and find the other guilty (*R v Gray* (1851), 2 Den 86, *R v Rendle* (1909), 2 Cr App Rep 33) But on an indictment for burglary and larceny against two, one may be found guilty of the burglary and larceny and the other of the larceny only (*R v Butterworth* (1823), Russ & Ry 520)

(s) On an indictment for embezzlement or fraudulent application or disposition of property, the defendant may be found guilty of simple larceny, or larceny as a clerk or servant or person employed in the public service or police, and on an indictment for simple larceny the defendant may be found guilty of embezzlement or fraudulent application or disposition of property (Larceny Act, 1861 (24 & 25 Vict c 96), s. 72) A defendant on an indictment for false pretences may be found guilty, even though it appears that the offence amounted to larceny (*ibid*, s. 88), but there is no provision enabling a defendant indicted of larceny to be found guilty, if the offence amounts to false pretences If a person is indicted for robbery, he may be found guilty of an assault with intent to rob (*ibid*, s. 41) If on the trial of any person for a misdemeanour it appears that the offence amounts to a felony, the defendant is not entitled on that ground to be acquitted of the misdemeanour, but the defendant cannot afterwards be prosecuted for the felony on the same facts, unless the court discharges the jury and directs the defendant to be indicted for the felony (Criminal Procedure Act, 1851 (14 & 15 Vict c. 100), s. 12) On an indictment for murder the defendant may be found guilty of concealment of the birth of the child alleged to be murdered (Offences against the Person Act, 1861 (24 & 25 Vict c. 100), s. 60) On an indictment for any felony except murder or manslaughter, if the defendant is charged with cutting, stabbing, or wounding any person, the jury may acquit the defendant of the felony and find him guilty of unlawfully cutting, stabbing or wounding (Prevention of Offences Act, 1851 (14 & 15 Vict c. 19), s. 5) On an indictment for feloniously shooting with intent to do grievous bodily harm the defendant cannot under the Prevention of Offences Act, 1851 (14 & 15 Vict c. 19), s. 5, be found guilty of unlawful wounding (*R v Muller* (1879), 14 Cox, O C. 356). On an indictment for manslaughter of a person under sixteen, the jury may find the defendant guilty of an offence of cruelty under the Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (4). On an indictment for the felony of administering poison or other destructive or noxious thing so as thereby to endanger the life of such person or to inflict upon him any grievous bodily harm, a defendant may be found guilty of the misdemeanour of administering etc. poison etc. to a person with intent to injure, aggrieve, or annoy such person (Offences against the Person Act, 1861 (24 & 25 Vict c. 100), s. 20, and see ss. 23, 24). If a person is indicted of the felony of the riotous demolition of buildings under s. 11 of the Malicious Damage Act,

**727.** Where a special verdict (f) is returned, it is for the court to draw such inference and to direct a verdict of guilty or not guilty to be entered (a)

SECT. 4.  
The  
Hearing.

The jury may also find a special verdict to the effect that the defendant was guilty of the act or omission charged against him, but was insane at the time when he did the act or made the omission (b).

Special  
verdict,  
Verdict of  
insanity

**728** A judge is not bound to receive at once the first verdict which the jury bring in, he may direct them to reconsider it (c) If their verdict is meaningless or inconsistent, he may refuse to accept it If, however, they insist on a general verdict of guilty or not guilty, the judge must accept it (d)

Reconsidering  
the verdict.

**729** If a verdict is entered which is not in accordance with the intention of the jury, the mistake may be corrected and a verdict

Correction  
of verdict.

1861 (24 & 25 Vict. c 97), he may be found guilty of the misdemeanour of riotously injuring such buildings (Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 12) If a person is indicted for rape or for the unlawful carnal knowledge of a girl under the age of thirteen under s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c 69), he may be found guilty of an offence under ss 3, 4, or 5 of that Act or of an indecent assault (*ibid.*, s 9) On an indictment for a corrupt practice at an election a defendant may be found guilty of an illegal practice (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c 51), s 52) If a person is indicted for any felony or misdemeanour, he may be found guilty of an attempt to commit the felony or misdemeanour charged (Criminal Procedure Act, 1851 (14 & 15 Vict. c 100), s 9, see *R v Brown* (1889), 24 Q. B. D 357, O O R., *R v Ring* (1892), 61 L. J (M C) 116 O O R., and *R v Williams*, [1893] 1 Q. B 320, O O R.) But see *R v M'Pherson* (1857), Deans & B 197, where it was held that a defendant could not be convicted of an attempt to steal goods from a house when there were no goods there This case is, however, of doubtful authority having regard to the decisions last mentioned See also *R v Connell* (1853) 6 Cox, O O 178, *R v Hapgood and Wyatt* (1870), L. R. 1 C O R 221

(i) See p 371, *ante*, *R v Dudley* (1884), 14 Q. B. D 271, 560, *R v Staines Local Board* (1888), 52 J. P. 215

(a) *R v Farnborough*, [1895] 2 Q. B. 461, O O R., per POLLOCK, B., at p 486, see *R v Naylor* (1867), L. R. 1 C. C. R. 4, at p 6 The judge cannot ask the jury whether they believe the evidence for the prosecution and, on their saying they do, enter a verdict of guilty (*R v Farnborough, supra*) It is doubtful whether a judge can lawfully put certain specific questions to the jury and, on their answering them in a particular way, direct them to find a particular verdict (see *R v Jameson* (1896), Shorthand Notes, p 396, where a verdict of guilty was extracted by this means from an unwilling jury. See O'Brien, *Life of Lord Russell of Killowen*, p 282) If, after the jury have given a special verdict, the court enters a general verdict of guilty, an appeal will lie to the Court of Criminal Appeal (see Criminal Appeal Act, 1907 (7 Edw. 7, c 23), s 5 (3), see *R v Knight* (1908), 1 Cr App Rep 186, *Il. v Murhead* (1908), 1 Cr App Rep 189) If no general verdict is given, it seems that the proper course is to move the record into the King's Bench Division (see *R v Dudley, supra*) If the finding of the jury is ambiguous or inconsistent, and a verdict of guilty has been entered on it, the conviction will be quashed (*R v Gray* (1891), 17 Cox, O O 299, O O R.), but see *R v Petch* (1909), 25 T. L. R. 401, C C A.

(b) Trial of Lunatics Act, 1883 (46 & 47 Vict. c 38), s 2(1) The effect of this verdict is that the court orders the defendant to be kept in custody as a criminal lunatic till the King's pleasure shall be known (see p 242, *ante*)

(c) *R. v. Meany* (1862), Le & Ca. 213

(d) *R v Meany, supra*, at p. 216, per POLLOCK, O B. *R v Ludon* (1861), Le. & Ca. 81.

**SPOT 4****The  
Hearing**Retirement  
of jury

entered in accordance with their intention, or they may retire and reconsider the question and bring in another verdict (e).

**730** If the jury cannot in court within a reasonable time agree on their verdict, they may be ordered to retire to a room, and a bailiff is sworn to keep them apart (f). They must not separate from the time when they have been directed to consider their verdict until the time when they deliver their verdict or are discharged (g).

Discharge  
if jury cannot  
agree

If the jury cannot agree upon a verdict, they may, at the discretion of the judge, be discharged without giving a verdict, but such a discharge does not amount to an acquittal, and the defendant may be tried again (h).

Verdict of  
not guilty

**731** If the verdict is one of not guilty, the defendant must be immediately discharged, unless there is another indictment against him on which it is proposed to proceed (i).

Special  
verdict

If the jury find the facts in a special verdict, the defendant may be detained in custody or admitted to bail until judgment is given.

Previous  
conviction

If the verdict is one of guilty and there is another count in the indictment against the prisoner charging him with having been previously convicted, he is arraigned on that count. If he pleads not guilty to the count alleging a previous conviction, the jury, without being re-sworn, are charged to inquire concerning the alleged previous conviction, evidence is given to prove it (k), and the jury give their verdict on the count alleging it.

(e) *R v Parlin* (1824), 1 Mood C C 45, *R v Volden* (1853), Dears C C 229 (where the correction was made when the defendant had been discharged and had left the dock, and the prisoner was brought back and sentenced).

(f) 2 Hale, P C 296, 297. They may, at the discretion of the judge be allowed the use of a fire when out of court, and may be allowed reasonable refreshment to be procured at their own expense (Jurors Act, 1870 (33 & 34 Vict c 77), s 23). In *R v Newton* (1849), 13 Q B 716, at p 735, ROYKE, B, it seems allowed a surgeon to attend one of the jurors.

(g) 4 Bl Com 354.

(h) *Winsor v R* (1866), L R 1 Q B 390, Ex Ch, *R v Newton* (1849), 13 Q B 716. If a verdict is so insufficiently expressed or so ambiguous that a judgment cannot be founded upon it, it seems that the court may discharge the jury and award a *venire de novo* (see *R v Murphy* (1869), L R 2 P C 330, at p 548, and compare *R v Woodfall* (1770), 20 State Tr 893, 903, 917). *Quarr*, whether any court except the court of trial now has the power to award a *venire de novo*. The Court of Criminal Appeal has no such power, see Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (1), and p 433, *post*.

(i) Gaol Fees Abolition Act, 1815 (55 Geo 3, c 50), ss 4, 5, 9, 13, Gaol Fees Abolition Act, 1845 (8 & 9 Vict c 114), *Mee v Cruikshank* (1902), 20 Cox, C C 210. A defendant on a charge of misdemeanour is, on acquittal, entitled to a copy of the record (3 Russell on Crimes, 6th ed, 463). On the question whether a defendant acquitted on a charge of felony is entitled to a copy of the record the authorities are conflicting (*R v Brangan* (1742), 1 Leach, 27, *Groenvelt v Burrell* (1697), 1 Ld Raym 252, *Browne v Cumming* (1829), 10 B & C 70).

(k) This is usually done by producing a certificate of the conviction under the hand of the clerk of the court or other officer having the custody of the records of the court where the conviction took place (Evidence Act, 1851 (14 & 15 Vict c 99), s 13), and by calling a witness to prove that the person

SUB-SECT 8—*Respite and Arrest of Judgment.*

SECT 4.

The  
Hearing.

Respite.

**732** If there is no count alleging a previous conviction, or if there is one and the jury have given their verdict on it, the court in charges of treason and felony demands of the prisoner whether he has or knows anything to say why judgment should not be pronounced against him (l)

If the defendant is a female and she has been found guilty of a capital charge, she may allege that she is quick with child, and thereupon a jury of twelve matrons must be impannelled and sworn to try whether or not this is the case. This they do by inspection of the defendant, but it is usual to give them the assistance of a surgeon in their examination. If the jury of matrons finds that she is quick with child, the court respites the offender until she is delivered of a child, or until the expiration of the ordinary period of gestation (m). Upon her delivery, or when such time has elapsed, unless she has been reprieved by the Crown, she should again be brought into court and asked whether she has anything to allege why execution should not be awarded (n). It would seem that she cannot then allege a new pregnancy (o).

**733** Any prisoner may, by himself or his counsel, move the court in arrest of judgment.

Motion in  
arrest of  
judgment.

The grounds of this motion may be an objection appearing on the face of the record, such as want of certainty in the indictment or omission or insufficient statement of some material allegation, where such defect is more than formal and has not been amended or cured by verdict. The granting of a pardon after the arraignment is also a ground for moving in arrest of judgment (p).

The court may itself without motion arrest judgment, if it is of opinion that no offence in law is disclosed in the indictment (q).

If judgment is arrested, an acquittal is entered and the defendant is entitled to be discharged, unless there is another indictment against him, but the acquittal is no bar to a fresh indictment (r).

**734** If judgment is not arrested, it may on good grounds be respited, except in the case of a conviction for murder (s).

Respite of  
judgment.

mentioned in the conviction is the same person as the defendant (see *R v Drabble* (1909), 53 Sol Jo 449).

(l) This is called the *allocutus*. In misdemeanours the defendant is not called upon (1 Chitty, Criminal Law, 652). For form of the *allocutus*, see 4 Chitty, Criminal Law, 364.

(m) 1 Chitty, Criminal Law, 759, *R v Baynton* (1702), 14 State Tr 598, 634. See *R v Wycherley* (1838), 8 C & P 262, *R v Hunt* (1847), 2 Cox, C C 261, Taylor, Medical Jurisprudence, Vol II, 39.

(n) 1 Hale, P C 369.

(o) 3 Co. Inst 17, 2 Hawk. P C, c 51, s 10, 1 Hale, P C 369, 2 ibid, 413, see also 1 Chitty, Criminal Law, 760, 761.

(p) See note (o), p 355, ante. A defendant must be in court when a motion in arrest of judgment is made (*R v Spragg* (1760), 2 Burr 930).

(q) *R v Waddington* (1800), 1 East, 143, 146. As to the effect of the repeal of a statute on which an indictment was founded, see *R v Denton* (1852), Dears C C 3, *R v Mawgan (Inhabitants)* (1838), 8 Ad & El 496, *R v McKean* (1820), Russ. & Ry 429.

(r) *Vaux's Case* (1591), 4 Co Rep 44 a, 45 a.

(s) *Keen v R* (1847), 10 Q. B 928, stat. 1 Edw 6, c 7, s 5. Judgment on

## SECT. 4.

The  
HearingDelivery of  
judgment.

## SUB-SECT. 2.—Judgment.

**735.** If judgment is not arrested or respited, the court proceeds then or subsequently to deliver judgment

In cases of treason and felony the defendant must be present when judgment is given (t) In cases of misdemeanour the presence of the defendant is not necessary, but is usually required, unless the judgment is merely to pay a fine, or there is good cause for his absence (u).

Before judgment is given, the court may, in cases where the court has a discretion as to what punishment it shall award (w), hear evidence for the Crown or the defendant on the question what punishment should be awarded (x).

Judgment must be pronounced orally in open court, if there is only one presiding judge, the judgment is pronounced by him, in trials at bar the practice is for the senior puisne judge to deliver judgment (a)

If there has been a verdict of guilty on more counts than one, the proper course is to deliver and enter up a separate judgment on each count (b)

conviction for murder cannot be respited (Offences against the Person Act, 1861 (24 & 25 Vict. c 100) s 2) In cases to which the Judgment of Death Act, 1823 (4 Geo 4, c 48), applies (i.e., offences under the Dockyards etc Protection Act, 1772 (12 Geo. 3, c 24), and the Piracy Act, 1837 (7 Will 4 & 1 Vict c 88), s 2), if the court is of opinion that the offender is a fit and proper person to be recommended to the royal mercy, the court may abstain from pronouncing judgment of death upon him, and may order the judgment to be entered on record (Judgment of Death Act, 1823 (4 Geo 4, c 48), s 1, Central Criminal Court Act, 1837 (7 Will 4 & 1 Vict c 77), ss 1, 3—7)

(t) *R v. Bethell* (1696), 1 Ld Raym 47; *R v Harris* (1697), 1 Ld. Raym 267

(u) *R v Hurwood* (1738), 2 Stra 1088, *R v Williams* (1870), 18 W R 806, *R v Constable* (1826), 7 Dow & Ry (K B) 683, *R v Kinglake* (1870), 18 W R 806 *R v Boltz* (1826), 5 B & C 334, *R v Woodward* (1831), 4 C & P 540, n, *R v Chichester* (1851), 17 Q. B 504, n If the defendant is absent without good cause, a warrant may be issued for his arrest, and if the proceedings are in the King's Bench Division and he is under recognisance to appear and receive judgment, the recognisance will be estreated and a warrant issued for his arrest (*R v Chichester, supra*)

(w) The court has no discretion in cases of murder (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 2), or treason (Treason Act, 1814 (54 Geo 3, c 146), s 1, but as to children see Children's Act, 1908 (8 Edw 7, c 67), s 103), or of offences against the Dockyards etc. Protection Act, 1772 (12 Geo 3, c 24), s 1, or of piracy (Offences at Sea Act, 1836 (28 Hen 8, c 16), s 2, stat. (1696-9) 11 Will 3, c 7, ss 7, 8, Piracy Act, 1837 (7 Will 4 & 1 Vict. c 88), s 2, but judgment for offences against the Dockyards etc Protection Act, 1772 (12 Geo 3, c 24), and the Piracy Act, 1837 (7 Will. 4 & 1 Vict c 88) may be recorded instead of being pronounced) In all other cases, it seems, the court has a discretion within certain limits.

(x) See *R v Dignam* (1837), 7 Ad & El 593, *R v Cox* (1831), 4 O & P 538, 540, *R v Withers* (1789), 3 Term Rep 428, *R v Lloyd* (1832), 4 B & Ad 135, Crown Office Rules, 1906, r. 170, *R v Ellis* (1826), 6 B & C 145, 148 As to evidence of character and previous conviction see p 382, post

(a) See *R v Lynch* (1908), 19 T. L. R. 163, at p 179 As to recording judgment of death, see *supra*. As to judgments by justices of assize in treason and felony, see stat. (1435) 14 Hen 6, c 1

(b) See *Campbell v. R* (1849), 11 Q. B 799, *O Connell v. R* (1844), 11 Cl. & Fin. 155, H L, *Castro v R* (1881), 6 App. Cas 229.

**736** After the judgment has been pronounced, a minute of the judgment is entered on the indictment and in the book kept for that purpose by the clerk of the court (c).

The court may at any time during the same assizes or sessions before the judgment has been entered on the record vacate the judgment passed and substitute another (d).

When the judgment has been entered on the record, it cannot be altered, but can be reversed or amended by the Court of Criminal Appeal (e).

SECT. 4  
The  
Hearing.

Entry of  
judgment etc

## Part VI.—Evidence in Criminal Cases.

### SECT. 1—General Rules.

**737.** The rules of evidence which govern the proof of facts in a criminal trial are substantially the same as those which apply in a civil trial (f), but there are some particular points of difference arising from the special nature of criminal proceedings.

General rule  
of evidence  
the same in  
criminal  
and in civil  
cases.

The rules of evidence may be classified under three main heads, (1) those which deal with the burden of proof; (2) those which determine what facts are relevant, and must or may be proved; (3) those which determine the method of proof. All these points are questions of law to be determined by the judge, while the weight of any facts proved, if a case is left to the jury, is a question for the jury to determine.

#### SUB SECT. 1—The Burden of Proof.

**738.** In order to decide on whom the burden of proof lies, it is necessary to consider what is the issue or point in dispute. The issue is determined by the pleadings.

Burden of  
proof

In criminal proceedings the prosecution in the indictment alleges

(c) It appears that a formal judgment is not drawn up, except when the record is made up for the purposes of a *certiorari* or writ of error (Stephen, *History of the Criminal Law*, Vol I., 309). But writs of error are now abolished (Criminal Appeal Act, 1907 (7 Edw 7 c. 23), s. 20 (1)). As to entry of judgment, see *Campbell v R* (1849), 11 Q. B. 799, *O'Connell v R* (1814), 11 Cl. & Fin. 165, H. L., *R v Powell* (1831), 2 B. & Ad. 75, *Ryalls v R* (1848), 11 Q. B. 781, 798, *Gregory v R* (1850), 15 Q. B. 974, Ex. Ch., *Holloway v R* (1851), 17 Q. B. 817.

(d) *R v Price* (1805), 6 East, 323, 328, *R. v. Leicestershire Justices* (1813), 1 M. & S. 442.

(e) *R v Fox* (1866), 10 Cox, C. O. 502, *R v Horn* (1883), 15 Cox, C. O. 205, C. O. B., *R v Turner*, [1904] 1 K. B. 181, C. O. B., see Criminal Appeal Act, 1907 (7 Edw 7, c. 23), ss. 4 (8), 5. As to the grounds on which judgment may be set aside, see p. 434, *post*.

(f) *A-G v. Le Merchant* (1772), cited in *R v. Watson* (1788), 2 Term Rep. 202, n., *R v. Burdett* (1820), 4 B. & Ald. 95, at p. 122, *R. v. Watson* (1817), 2 Stark. 116, 155, *R v. Murphy* (1837), 8 C. & P. 297, 306, *R v. Franke* (1874), L. R. 2 C. O. B. 128, at p. 133. As to the general rules of evidence, see title EVIDENCE. It is a rule of prudence rather than law that requires more stringent proof in criminal than in civil cases (*R v. White* (1861), 4 F. & F. 383, *R v. Hobson* (1823), 1 Law C. O. 261, *R v. Blandy* (1752), 18 State Tr. 1118, *per Legge*, B., at 1166).

**SECT. 1.**  
**General**  
**Rules**

certain facts The defendant is called upon to plead to the indictment If he pleads guilty, he admits that he is guilty of the offence as charged in the indictment, but not necessarily the truth of the facts stated in the depositions (g) If he pleads the general issue, i.e., not guilty, he denies all these facts and thus raises the issue whether the facts alleged in the indictment are true or not A defendant may also plead one or more of certain special pleas (a), by which he affirms that certain facts are true, the prosecution then either traverses or admits the special plea

He who  
affirms must  
prove

The general rule of evidence is that he who affirms must prove, therefore, a defendant who pleads not guilty throws upon the prosecution the burden of proving that the facts alleged in the indictment are true, and, if he pleads a special plea and the prosecution traverses it, the burden is upon the defendant of proving that the facts alleged in his plea are true

**SUP-SECT. 2.—Relevant Facts**

Facts that  
must or may  
be proved

**739** A party can only prove facts relevant to his case, and it is only the party on whom the burden of proof lies who is bound to prove any facts at all

In all criminal trials, where the defendant pleads not guilty, the burden of proof is on the prosecution, who must prove the facts that are alleged in the indictment, and may prove any other facts which help to prove those facts If the prosecution does not give sufficient proof of the alleged facts so as to establish a *prima facie* case, the case must be withdrawn from the jury and a verdict of "not guilty" directed (b)

The defendant, unless he pleads a special plea, need not give any evidence at all, he may content himself with attempting to destroy the case for the prosecution or to prove his own innocence by cross-examination of the witnesses for the prosecution If he adduces evidence, it must be relevant to his case, that is, it must tend to disprove the facts alleged by the prosecution or to prove his own innocence.

Proof of  
*corpus delicti*

**740** The prosecution must first give satisfactory proof of the *corpus delicti*, i.e., must prove that the offence charged has been committed by someone (c) The prosecution must then prove that

(g) See *R v Riley*, [1896] 1 Q B 309, C O R, per HAWKINS, J, at p 318

(a) *Fig*, a plea to the jurisdiction, of *autrefois convict* or *autrefois acquit*, of a pardon, of justification in libel and of an obligation to repair a highway *ratione tenuræ*, see p 355, *ante*. A defendant may also demur to the indictment, but this only raises an issue of law, not an issue of fact

(b) See *R v Skeddart* (1909) 25 T L R 612, C O A.

(c) See 2 Hale, P C 290, *R v Burdett* (1820), 4 B & Ald 95, at p 162, *Evans v. Evans* (1790), 1 Hag Con 355, per Sir WILLIAM SCOTT, at p 105 The *corpus delicti* may be proved by direct evidence or by irreassable grounds of presumption (*ibid.*). It is doubtful whether it must be established by some evidence other than the mere confession of the accused (1 Phillips on Evidence, 10th ed, 406, *R v Flaherty* (1847), 2 Car & Kir 782, *R v Wheeling* (1789), 1 Leach, 311, *R v White* (1823), Russ & Ry 508, *R v Falkner* (1822), Russ & Ry 481, *R v Tippet* (1823), Russ & Ry 509, *R v Eldridge* (1821), Russ & Ry 440, *R v Tuffe* (1831), 5 C & P 167, *R v Burton* (1834), Dears C O 282, *R v Edgar* (1831), 3 Russell on Crimes, 6th ed, 478, n, per PATTERSON, J, *R v Sutcliffe* (1850), 4 Cox, C O 270, *R v Unkles* (1873), 8 I R O L 50, per FITZGERALD,



the defendant is the person who committed the offence charged. Any facts which affirmatively prove either of these propositions are relevant evidence for the prosecution (d).

All the details of the alleged criminal transaction are relevant to the case for the prosecution as being part of the *res gestæ* and should be proved.

*Res gestæ*

J., at p 57, *R v Sullivan* (1887), 16 Cox O C 347) In charges of murder or manslaughter a conviction can never, it seems, take place unless the body of the person whom the prisoner is accused of having murdered is found or there is evidence, either direct or circumstantial, of the death of the person said to be murdered (see 3 Co Inst 232, 2 Hale, P C 290; *R v Downsq* (1822) Wills on Circumstantial Evidence, 5th ed, 240, *R v Hindmarsh* (1792), 2 Leach, 569, *R v Hopkins* (1831), 8 C & P 591, *R v Tawell* (1845), Wills on Circumstantial Evidence, 5th ed, per PARKE, B., at p 316) It seems therefore, that in charges of murder a mere confession without proof of the finding of the body or of the death of the person alleged to be murdered is insufficient (see *Anon.*, 1 Leach, 264, n) According to MAULE, J. (*R v Burton*, *supra*, at p 54), the rule as to the *corpus delicti* is a rule of caution and prudence in cases of murder and manslaughter, and not an absolute rule of evidence In cases of concealment of birth the dead body of the child must be found and identified (*R v Williams* (1871), 11 Cox, C O 684) As to proof of the *corpus delicti* in cases of libel, see *R v Burdett* (1820), 4 R & Ald 95 In charges of larceny there must be evidence that the goods mentioned in the indictment were stolen by someone (*R v Dredge* (1843), 1 Cox, O C 235), but it is not necessary always to prove that the prosecutor missed any of the goods alleged to be stolen, if from the facts proved the jury may infer that the goods were taken from him (2 East, P C 657, *R v Burton* (1854), 23 L J (M C) 52 C O R, *R v Hooper* (1857), 1 F & F 85), in such a case the proof of the *corpus delicti* is inextricably bound up with proof of the connection of the defendant with it But a person cannot be convicted of stealing goods of an unknown person, unless due proof is made that a felony was committed in respect of these goods (2 Hale, P C 290) In a charge of conspiracy general evidence of the existence of the conspiracy may first be given, before particular facts are proved which show that one or more of the defendants took part in it (*Queen Caroline's Case* (1820), 2 Brod & Bing 310, H. L. see 2 Starkie on Evidence, 3rd ed, 327, *R v Dray* (1883), 15 Cox, C O 334, *R v Hammond* (1799), 2 Esp 719, *R v Hunt* (1820), 3 B & Ald 566, *R v Frost* (1839), 9 O & P 129, 475, *R v Sidney* (1683), 9 State Tr 817, at p 841, *R v Shellard* (1840), 9 O & P 277, *R v Desmond* (1868), 11 Cox, O C 146) As to a defendant being found guilty of an offence other than that with which he is charged, see p 371, *ante*

(d) See p 378, *ante* Thus, while it is not incumbent on the prosecution to prove motive (see p 236, *ante*), yet evidence may be given for the prosecution to show that the defendant had a motive for committing the crime charged (see *R v Cleves* (1830), 4 C & P 221, at p 226), and so evidence may be given for the defence to show that the defendant had no motive for committing the alleged crime, or that he had a motive for not committing it (*R v Grant* (1865) 4 F & F 322, *R v Bingham* (1811), Wills on Circumstantial Evidence, 5th ed, 217, *R v Downsq* (1822), Wills on Circumstantial Evidence, 5th ed, 218) Where a special intent is of the essence of an offence (e.g., assault with intent to murder), the special intent must be proved, and proof of a different intent will not suffice (*R v Pembilton* (1874), L R 2 O C R 119, *R v Coppard* (1855), Wills on Circumstantial Evidence, 5th ed, 217, *R v Rooke* (1858), 1 F & F 107, but see *R v Woodburne* (1722), 16 State Tr 53, at 80, 81). But a criminal intent may often be presumed from an act itself (*R v Mawpridge* (1707), 1 East, P C 276, *R v Maloney* (1861), 9 Cox, C O 6, *R v Farrington* (1811), Russ & Ry 207, *R v Ward* (1872), L R 1 O C R 356) If it is proved that a person did an act which is criminal only if done by a person in a certain state of the mind (e.g., receiving stolen goods with knowledge that they are stolen), such a state of mind cannot be inferred from the mere act itself and must be proved by accompanying circumstances or other facts (see *R v Odly* (1851), 2 Den 264, at p 273)

**SECT. 1**  
**General**  
**Rules**

All acts done by the accused or by anyone in his presence or by anyone acting under his orders, and all statements, whether oral or written, made by him or by anyone in his presence or by his authority in his absence, either at the time of the alleged transaction or before or after it, are, if connected with the criminal transaction, relevant and may be proved (e).

Evidence  
must be  
confined to  
facts  
connected  
with the  
offence

The evidence must be confined to the facts which constitute or are connected with the offence charged, and proof cannot generally be given of other facts which have no connection with this offence (f). If, however, there are other facts which are so inextricably mixed up with the facts which constitute the offence charged as to form one transaction, proof may be given of such other facts (g).

Suborning  
evidence.

**741** The fact that an accused person has induced or attempted to induce another person to give false evidence on his behalf is relevant to the case for the prosecution and may be proved at the trial (h).

Guilty  
knowledge  
or intent

**742** Evidence cannot be given for the prosecution to prove that the defendant is of bad character (i) or has a propensity to commit criminal acts of the same nature as the offence charged (j).

But in cases where a guilty knowledge or intention or design is of the essence of the offence, proof may be given that the defendant did other acts similar to those which form the basis of the charge. Such acts may be proved, whether they were done before or after

(e) See *R v Gordon (Lord George)* (1781), 21 State Tr. 456, 535, *R v. Damarie* (1709), Post 214. As to confessions by the defendant, see p 394, post. There is some doubt as to expressions used in the absence of the accused immediately after the act alleged to be done by the accused (see *R v. Bealngfield* (1879), 14 Cox, C O 341, where, the defendant being charged with the murder of his wife by cutting her throat, the particulars of a statement made by the wife on coming with her throat cut out of the house where the prisoner was were not allowed by COCKBURN, C J, to be given in evidence, but see *R v Morgan* (1875), 14 Cox, C O 337, *R v Foster* (1834), 6 C & P 325, *Aison v Kinnaird (Lord)* (1805), 6 East, 188, per Lord ELLENBOROUGH, C J, at p 193, *Thompson v Trevanion* (1698), Skin 402). As to a statement by a third party made out of the hearing of the defendant but immediately before the commission of an offence, see *R v Fowkes*, *Times newspaper*, 8th March, 1856, *Stephen, Digest of the Law of Evidence*, 4.

The fact that a person in respect of whom an outrage or injury is alleged to have been committed made a complaint to a third person soon after the alleged outrage or injury, although such complaint was made in the absence of the defendant, is admissible, and in cases of rape and similar offences the details of the complaint are admissible (see p. 394, post).

(f) *R v Butler* (1846), 2 Car. & Kir. 221, *R v Ollis*, [1900] 2 Q. B. 768, C O R., per CHANNELL, J., at p. 781.

(g) *R v Vole* (1823), Russ. & Ry 531, *R v Ellis* (1826), 6 B & C 145, *R v. Winkworth* (1830), 4 C & P 444, *R v Mansfield* (1841), Car & M 140, *R v. Long* (1833), 6 C & P 179, *R v Bleasdale* (1848), 2 Car. & Kir 765, *R v Odden* (1862), 3 F. & F 838, *R v Firth* (1869), L R. 1 C O R 172, *Ex parte Burnby*, [1901] 2 K. B 458; *R v Welman* (1853), Dears. C O 188. "If several and distinct offences do intermix and blend themselves with each other, the detail of the party's whole conduct must be pursued" (*R v Whaley* (1804), 2 Leach, 983, per Lord ELLENBOROUGH, C J., at p. 985).

(h) *R v. Watt* (1905), 20 Cox, C O, 852

(i) As to giving evidence of previous convictions, see p. 382, post

(j) *R v. Twberfield* (1864), 84 L. J. (M. C.) 20, C. C. R., *R v Cole* (1810), *Phillips on Evidence*, 10th ed. L., 508

the acts which form the basis of the charge, and even if they form or have formed the basis of other charges. Such evidence is admissible to show not that the defendant did the acts which form the basis of the charge, but that, if he did such acts, he did them intentionally and not accidentally, or inadvertently, or innocently, or that they formed a part of a system (k).

**SECT. I.  
General  
Rules.**

Evidence that  
defendant has  
committed  
similar  
offences.

(k) Such evidence has been admitted on charges of murder (see *R v Geering* (1849), 18 L. J. (M. C.) 215, where the prisoner was accused of poisoning her husband with arsenic, and to show that the husband was poisoned with arsenic and that the arsenic was intentionally given him, it was proved that of her three sons who lived with the prisoner, and whom she supplied with food, two died and one became ill from arsenical poisoning), see also *R v Gurner* (1864), 4 F & F 346, *R v Cotton* (1873), 12 Cox, C. O. 400, *R v Herson* (1878), 14 Cox, C. O. 40, *R v Flannagan* (1884), 15 Cox, C. O. 403, compare *R v Mogy* (1830), 4 C. & P. 364, and see *Makin v A-G for New South Wales*, [1894] A. C. 57, P. C. where the prisoners (husband and wife) were tried for the murder of an infant child whom they had received from its mother for a small sum on the pretence that they wished to adopt it, and whose body was found buried in the yard of a house where the prisoners had lived, to prove that the child did not die accidentally or from natural causes evidence was given that the prisoners had received other children for small payments and on similar representations, and that the bodies of twelve other infants had been found buried in the yards of houses where the prisoners had lived). Similar evidence may be admitted on a charge of the unlawful use of instruments to procure a miscarriage (*R v. Dale* (1889), 16 Cox, C. O. 703, *R v Bond*, [1906] 2 K. B. 389, C. O. R.), on a charge of maliciously shooting (*R v Voke* (1823), Russ & Ry 631), on a charge of false pretences or fraud (*R v Roebuck* (1856), 7 Cox, C. O. 120, C. O. R., *R v Francis* (1874), L. R. 2 C. O. R. 128, *R v Rhodes*, [1899] 1 Q. B. 77, C. C. R., *R v Ollis*, [1900] 2 Q. B. 758, C. O. R., *R v Wyatt*, [1904] 1 K. B. 188, C. C. R., *R v Smith* (1905), 20 Cox, C. O. 804, C. O. R., the case of *R v Holt* (1860), 8 Cox, C. O. 411, C. O. R., is not, it seems, now to be regarded as an authority to the contrary see *R v Smith*, *supra*, embezzlement (*R v Richardson* (1860), 2 F & F. 343, *R v Stephens* (1888), 16 Cox, C. O. 387, C. O. R.), uttering forged instruments or counterfeit coins (*R v Whaley* (1804), 2 Leach, 983, *R v Hough* (1806), Russ & Ry 120, *R v Ball* (1807), Russ & Ry 132, *R v Millard* (1813), Russ & Ry 246, *R v Fuller* (1816), Russ & Ry 308, *R v Foster* (1876), 24 L. J. (M. C.) 184, C. O. R.; *R v Smith* (1831), 4 C. & P. 411, *R v Phillips* (1829), 1 Lew. C. C. 103, *R v Forbes* (1835), 7 C. & P. 224, *R v Cooke* (1838), 8 C. & P. 586, *R v Brown* (1861), 2 F & F 559, *R v Weeks* (1861), 30 L. J. (M. C.) 141, C. C. R., *R v Salt* (1862), 3 F & F 834, *R v Colclough* (1882), 15 Cox, C. O. 92, C. O. R.), arson (*R v Doussell* (1846), 2 Car & Kir 306, *R v Gray* (1866), 4 F & F 1102, but see *R v Harris* (1864), 4 F & F 312), conspiracy to excite discontent and disaffection (*R v Hunt* (1820), 3 B. & Ald. 566), accusing a person of a crime with intent to extort money (*R v Egerton* (1818), Russ & Ry 576, *R v Cooper* (1849), 3 Cox, C. O. 547). In a case of larceny or robbery evidence of similar larcenies or robberies is not admissible to prove the *animus furandi* (*R v Butler* (1846), 2 Car & Kir 221), except, perhaps, where such evidence would tend to disprove a defence of accident or mistake or *bona fides* (*R v Winkworth* (1830), 4 C. & P. 444), and in cases of larceny by a trick evidence of similar larcenies would be admissible to prove system or dishonest intention. In cases of receiving stolen goods with guilty knowledge that they were stolen evidence of the receipt of other stolen property, if part of the same transaction, was admissible at common law (*R v Dunn* (1828), 1 Mood C. C. 146, *R v Nicholls* (1858), 1 F & F 51, but see *R v Oddy* (1851), 2 Den 264). Now by statute (Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112), s. 19), on a charge of receiving stolen goods, evidence that other property stolen within the preceding twelve months was found in the possession of the accused, or that the accused has within five years preceding the charge been convicted of any offence involving fraud or dishonesty, is admissible to prove guilty knowledge (see *R v Girod* (1906), 70 J. P. 614, C. O. R., and p. 683, *post*). As to uttering counterfeit coins see *Counterfeiting Offences Act, 1861* (24 & 25 Vict. c. 99), s. 10, see p. 614, *post*.

## SECT 1

General  
RulesEvidence of  
character of  
defendant

## SUB-SECT 3—Evidence as to Character

**743** Evidence of the general reputation of the defendant for good character is relevant to the case for the defence, if such evidence is applicable to the particular nature of the charge (*l*). The defendant is allowed to give such evidence for the purpose of showing that it was unlikely that he should have committed the offence charged (*m*).

If the defendant gives such evidence (*n*), he makes his character a matter relevant to the issue, and if he calls witnesses to character, they may be cross-examined by the prosecution both as to his general bad character and as to particular charges against him (*o*).

Previous  
conviction  
of defendant.

In most cases if evidence of good character has been given and the defendant has been previously convicted, evidence of such previous conviction may be given (*p*).

If the prisoner himself gives evidence, he can only be cross-examined as to his bad character or as to a previous conviction or charge against him, where the proof that he has been committed or been convicted of another charge is evidence against him to show that he is guilty of the offence with which he is charged (*q*), or where he has sought to establish his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or he has given evidence against any other person charged with the same offence (*r*).

(*l*) *R v Rowton* (1865), 10 Cox, C C 25. Evidence of disposition is not admissible (*ibid*).

(*m*) *R v Rowton*, *supra*, per WILLES, J, at p 38, *R v Frost* (1840), Gurney's Rep, per TINDAL, C J, at p 749. Evidence of character is only of weight where the other evidence is in even balance, or where there is fair and reasonable doubt of the prisoner's guilt (*R v Davison* (1808), 31 State Tr 99, per Lord ELLENBOROUGH, C J, at p 217, *R v Haugh* (1813), 31 State Tr 1092, per LE BLANC, J, at p 1122, *R v Turner* (1864), 6 State Tr 563, per HYDE, C J, at p 613, *R v Swindlen* (1702), 14 State Tr 559, per HOLF, C J, at p 596, *R v Dammare* (1710), 15 State Tr 521, per PARKER, C J, at p 604, and see *R v Draper* (1807), 30 State Tr 959, per Lord ELLENBOROUGH, C J, at p 1018.

(*n*) This can be done by cross examining witnesses for the prosecution as to the defendant's good character as well as by calling witnesses as to such character (*R v Gadbury* (1838), 8 C & P 676, *R v Skrimpton* (1851), 2 Den 319).

(*o*) See *R v Rowton*, *supra*, C C R, *R v Hodgkins* (1836), 7 C & P 298. It is not usual to cross-examine witnesses to character or to give rebutting evidence of bad character, unless there is some definite charge against the defendant (*R v Hodgkins*, *supra*, but see *R v Rowton*, *supra*). As to the proof of bad character by evidence of circumstances of suspicion, see *R v Roan* (1846), 1 Cox, C C 291, and *R v Wood* (1841), 5 Jur 225.

(*p*) See Previous Conviction Act, 1836 (6 & 7 Will 4, c 111), s 1. If a person tried for any felony gives evidence of good character, a previous conviction of felony against the prisoner may be proved (Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s 1 (*f*)). If a person tried for any offence punishable under the Larceny Act 1861 (24 & 25 Vict. c. 96), gives evidence of good character, evidence may be given of a previous conviction charged in the indictment (*ibid*, s 116). There are similar provisions in the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99) (*ibid*, s. 47).

(*q*) See p 380, *ante*.

(*r*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s 1 (*f*), see p 404, *post*.

**744** In a prosecution for receiving stolen goods it is expressly provided (s) that evidence of a previous conviction of the accused may be admitted in order to prove guilty knowledge

SMO. 1.  
General  
Rules.

In a prosecution of a suspected person or reputed thief under s 4 of the Vagrancy Act, 1824 (a), for frequenting certain public places with intent to commit felony, it is expressly provided (b) that general evidence of bad character may be given by the prosecution to prove the intent

Receiving  
Vagrant.

**745** In certain cases the commission of one offence after conviction for another offence is an aggravation of the second offence and exposes the offender to a severer punishment, and in most of such cases the previous conviction is alleged in a separate count of the indictment, but the jury are not informed of, and no evidence is given on, this separate count until after a verdict of guilty has been given on some other part of the indictment (c)

Aggravation

In the case of certain statutory offences (d) the previous conviction is a substantive part of the charge, and in such a case the previous conviction is communicated and proved to the jury in the same way as the rest of the case for the prosecution (e)

On the trial of an indictment for non-repair or obstruction of a highway or similar nuisance evidence may be given of a previous conviction against the same defendant in respect of the same highway, and such evidence is generally conclusive as to the road being a highway and the liability of the defendant to repair (f).

**746** The character of the prosecutor is not in general a matter relevant to the issue, unless he is also a witness and his credibility is impeached. But it seems it is open to the defence to show, if there is any doubt as to the truth of the charge, that the prosecutor in instituting the prosecution has been influenced by unworthy motives (g)

Defence of  
character of  
prosecutor

In charges of rape the prosecutrix may be cross-examined to

(s) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 19, see note (k) on p 381, ante

(a) 5 Geo 4, c 83

(b) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s. 15. The offence referred to is punishable on summary conviction

(c) See Previous Conviction Act, 1836 (6 & 7 Will 4, c 111), s 1, Larceny Act, 1861 (24 & 25 Vict c 96), s 116, Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 37, Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 9, *Faulkner v R*, [1905] 2 K B 76; *R v Blaby*, [1894] 2 Q B 170, C O R, *R v Martin* (1869) 1 R 1 O O R 214

(d) Namely, in charges under the Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 10, and under the Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 7

(e) *R. v. Penfold*, [1902] 1 K B 547, O C R

(f) See *R v Haughton (Inhabitants)* (1853), 1 E. & B 501, *R v Maybury* (1861), 4 F & F 90, *R v St Pancras* (1794), Peake, N P 220, and see *R. v Stoughton* (1670), 2 Wms Saund, 1871 ed, at p 481. *Aliter* of an indictment for a nuisance in carrying on an offensive trade (*R v Fairie* (1857), 3 E. & B 486). Indictments for non-repair of highways, though criminal in form, are civil in reality, and for this reason the principles of estoppel, which have generally no application to criminal cases, are applied to the trial of such indictments, see title HIGHWAYS.

(g) See *R v Coyle* (1851), *R v Roberts* (1886), Wills on Circumstantial Evidence, 5th ed, 211

SECT 1  
General  
Rules

show that she is of general bad character or a common prostitute, or has had immoral intercourse with the accused or with other men, and evidence may be given by witnesses to prove such imputations except as to intercourse with men other than the accused, as regards which the defendant is bound by her answer (h).

SUB-SECT 4 — *Credibility of Witnesses*

Credibility of  
witnesses

**747.** The credibility of any witness who gives evidence as to the facts either for the prosecution or the defence is material to the issue (i)

Any witness called as to the facts may be cross-examined by the other side as to credit for the sake of impugning his character, credibility, impartiality, memory, accuracy, intelligence, or means of knowledge (k)

General evidence may be given on behalf of either side to show that any witness as to the facts (other than the defendant) called by the opposite side has such a character or reputation that he is unworthy of being believed (l)

A witness other than the defendant may be cross-examined as to particular facts proving his bad character (m), and any witness may be cross-examined as to other facts impeaching his credibility

A witness other than a defendant may be asked on cross-examination whether he has committed a crime, but the witness may object to answer such a question on the ground that it may incriminate him (n). If he answers the question and denies the imputation, he can only be contradicted, if he has been previously convicted, in which case evidence may be given to prove the conviction (o)

Impartiality

**748** A witness may be cross-examined as to his impartiality or his connection with the person for whom he gives evidence, and if

(h) *R v Barker* (1629), 3 C & P 589, *R v Martin* (1834), 6 C & P 562, *R v Cockcroft* (1870), 11 Cox, C C 410, *R v Hodgson* (1811), Russ & Ry 211. The same rule applies to assault with intent to ravish and indecent assault (*R v Clarke* (1817), 2 Stark, 241, *R v Holmes* (1871), L R 1 C C R 334, *R v Riley* (1887), 18 Q. B D 481, C O R).

(i) *R v Baker*, [1895] 1 Q. B 797, C O R

(k) But a defendant who gives evidence under the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), may not, except in certain events (see p 404, *post*), be cross-examined as to his character: see s 1 (f)

(l) *R v Brown* (1867), L R 1 C C R 70, *R v Bingham* (1830), 4 C & P 392. See as to the form of the question *R v de la Motte* (1781), 21 State Tr 687, 811, *per BULLER, J*, *R v Watson* (1817), 2 Stark 116, *per ABBOTT, J.*, at p 154, *Mason v Hartink* (1802), 4 Esp 102, where Lord ELLENBOROUGH, C J, approved of the question put in this way, "Have you the means of knowing what the general character of this witness was, and from such knowledge of his general character would you believe him on his oath?"

(m) See *R v Castro* (1873), Shorthand Notes, Vol. II, 1002, where a witness who had given evidence as to making tattoo marks on Sir R C Tichborne was cross-examined as to an act of adultery with the wife of one of his friends. As to cross-examination of the prosecutrix on charges of rape, see p 383, *ante*

(n) *R v Watson* (1817), 2 Stark 116, *per BAYLEY, J*, at p 153

(o) Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s 6.

he denies the imputation of partiality, evidence may be given to prove that he is not impartial or that he is so closely connected with the person for whom he gives evidence that he is not likely to be impartial (*p*).

Subject to these exceptions, a witness who denies facts put to him in cross-examination cannot be contradicted as to such facts, unless they are relevant to the issue (*q*).

(*p*) See *R v Fewin* cited in *Harris v Tippet* (1811), 2 Camp 638. In this case on a charge of larceny the prisoner's counsel was allowed to ask the principal witness for the prosecution whether he had not been charged with robbing his master and whether he had not afterwards said he would be revenged and "would soon fix him in Monmouth gaol", on his denying both suggestions LAWRENCE, J., refused to allow the defence to prove that the witness had been charged, but allowed proof of the words alleged to be used, as such words were material to the guilt or innocence of the prisoner. So in *R v Shaw* (1888), 16 Cox, C C 501, a witness for the prosecution having denied on cross-examination that he had had a quarrel with the prisoner, CAVE, J., allowed evidence in contradiction to be given to prove the quarrel and that the witness had threatened harm to the prisoner. In *R v Whelan* (1881), 14 Cox, C C 595, on a charge of murder a witness who identified the prisoner as the murderer was cross-examined as to an alleged statement that he had made on a former occasion to the effect that the prisoner was not the murderer. In *Stafford's (Lord) Case* (1680), 7 State Tr 1293, 1400, evidence was given on behalf of the accused that one of the witnesses for the Crown had bribed witnesses to swear against the accused, and see *Langhorn's Case* (1679), 7 State Tr 417, 446, and *Caroline's Case* (1820), 2 Brod & Bing 284, 302, 311, H L. The fact that a witness has accepted a bribe to give evidence or that he has given another person a bribe to induce him to give evidence is material to the issue as going to the impartiality of the witness and may be proved (4 - *G v Hitchcock* (1847), 1 Exch 91, at p 101). A witness may be cross-examined as to a previous statement made by him relative to the subject-matter of the indictment and inconsistent with the evidence he has given, and if he does not distinctly admit that he made such statement, proof may be given that he did in fact make it, but before such proof can be given, the circumstances of the statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement (Evidence Act, 1865 (28 & 29 Vict c 18), s 4). A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject-matter of the indictment without the writing being shown to him, but he cannot be contradicted by proof of such writing, unless his attention is first called to those parts of the writing which are to be used to contradict him (*ibid*, s 5). This is frequently done in the case of depositions of the witness before the examining justices (*R v Riley* (1866), 4 F & F 964, *R v Wright* (1866), 4 F & F 967, *R v Hughes* (1868), Roscoe, Criminal Evidence, 13th ed., 118). If a witness denies that he made such a statement, evidence can only be given to contradict him, when the statement is relevant to the issue. Thus, where a witness for the Crown was asked in cross-examination if he had not previously said that the officers of the Crown had offered him a bribe and he denied having said so, it was held that evidence could not be given to prove that he did say so, as the question whether such a statement had been made was not relevant to the issue (*A - G v Hitchcock* (1847), 1 Exch 94). A witness may be cross-examined to show that he stands in such a close relation to the defendant that he is not indifferent or impartial, and if he denies the suggestion evidence may be given to prove such relation (*Thomas v David* (1836), 7 O & P 350).

(*q*) See *A - G v Hitchcock*, *supra*, per POLLOCK, O.B., at p 99. "If the answer of a witness is a matter which you would be allowed on your part to prove in evidence—if it has such a connection with the issue that you would be allowed to give it in evidence—then it is a matter on which you may contradict him." Thus, if a witness is asked whether he has not and denies that he has



**SECT. 1**  
**General**  
**Rules**

**749** If the character of a witness has been impeached either by cross-examination or by direct evidence called for the purpose of impeaching it, the side that calls the witness may give evidence to show that his character is such that he is worthy of credit (r).

**SECT. 2 —Method of Proof.**

**SUB-SECT. 1 —In General**

Manner of  
proving facts  
the same  
generally in  
criminal and  
civil cases

**750** As regards the manner in which facts relevant to the issue must or may be proved there is in general no difference between civil and criminal cases (s), but there are some particular points of difference arising out of the special nature of criminal proceedings. Thus, in criminal proceedings no admissions preliminary to the trial can ordinarily be made by the defendant or his advisers so as to dispense with oral evidence and strict proof of facts necessary to be proved (t).

The plea of guilty at the trial is a formal and conclusive admission of the offence charged in the indictment, and dispenses with the necessity of proving the facts alleged therein.

Admissions

When the plea is not guilty, in cases of misdemeanour the defendant or his counsel may at the trial make other admissions of facts, but in cases of felony no such admissions can be made. Therefore, if the defendant pleads not guilty on a charge of felony, oral evidence is indispensable, whereas if he pleads not guilty on a charge of misdemeanour, such evidence may by agreement be dispensed with in certain cases (a).

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made a statement on a question affecting the guilt or innocence of the prisoner inconsistent with the evidence which the witness is giving, such a statement may be proved by the other side (*R v Whelan* (1881), 14 Cox, C C 595). As to cross-examination of a party's own witness by the party who calls him, see p. 364, ante. As to rape, see p. 383, ante.

(r) *R v Murphy* (1753), 19 State Tr. 693, at p. 724, see *R v Whelan* (1881), 14 Cox, C C 595.

(s) *1-G v Le Merchant* (1772), cited 2 Term Rep. 201, n. 202, *R v Watson* (1817), 2 Stark 116, at p. 155, *R v Burdett* (1820), 4 B & Ald 95, per Best, J., at p. 122, *R v Murphy* (1837), 8 C & P 297, 306, *R v Francis* (1874), L. R. 2 C C R 128, at p. 133. As most crimes are committed in secret, and as the question of intention and guilty mind plays a much more prominent part in criminal than in civil proceedings, direct evidence of the guilt of an accused person is often impossible, and a great deal of the evidence in criminal trials is of the kind which is called indirect or circumstantial or presumptive (*R v Burdett* (1820), 4 B & Ald 95, per Best, J., at p. 122), and see Report of the Committee of the House of Commons appointed to inspect the Journals of the House of Lords on the Trial of Warren Hastings, Works of Edmund Burke (ed. 1826, Rivington), Vol. XIV, 399.

(t) See *R v Thornhill* (1838), 8 C & P 575, where, in a prosecution for a misdemeanour (perjury), the legal advisers on both sides had agreed before the trial that formal proofs should be dispensed with and that part of the case for the prosecution should be admitted, but Lord ABINGER, C.B., said "In a criminal case tried on the Crown side of the assizes I cannot allow any admission to be made on the part of the defendant, unless it is made at the trial by the defendant or his counsel." It appears from this that, if a criminal case is removed by *certiorari* and is tried in the King's Bench Division, or on the civil side at the assizes, preliminary admissions can be made, but this only applies generally to misdemeanours, as it is not the practice to remove indictments for felony by *certiorari* (see title CROWN PRACTICE).

(a) Phillips on Evidence 10th ed., Vol. I, 391, *R v Foster* (1836),



SECT 2  
Method of  
Proof.  
Discovery.

**751** In criminal cases, with certain exceptions (*b*), evidence on commission cannot be taken or used.

**752** In criminal cases neither party can obtain evidence from the opposite side by means of interrogatories or discovery of documents (*c*)

A defendant in a criminal proceeding cannot be compelled to produce evidence against himself (*d*), consequently no order can be made on him to produce documents or other things (*e*). But an order may be made in a criminal case under the Bankers' Books Evidence Act, 1879 (*f*), for the inspection and taking copies of

**7 C & P 495** In cases of misdemeanours admissions can be made (*R v. Foster, supra, per PATTERSON, J, R v Morphey* (1814), 2 M & S 602). A defendant charged with a crime may make statements before his trial which amount to confessions and admissions of his guilt, and such statements are evidence against him and may be proved against him at his trial, if he pleads not guilty but such statements may be repudiated or explained by him at his trial and are not conclusively binding on him (see p 394, *post*)

(*b*) In prosecutions for misdemeanours depositions of a witness who is about to leave the country can, it seems, be taken with the defendant's consent (*R v Morphey* (1814), 2 M & S 602, where Lord ELLENBOROUGH, CJ, said there was a precedent for such a proceeding in the impeachment against Warren Hastings). Under the Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 691, if a criminal proceeding is instituted here and it is proved that a witness whose deposition has been taken on oath out of the United Kingdom in the presence of the accused before any justice in the King's dominions, or any British consular officer elsewhere, cannot be found in the United Kingdom, the deposition can be used in evidence (see *R v Conning* (1868), 11 Cox, C. C. 174, *R v Anderson* (1868) 11 Cox, C. C. 154, *R v Stewart* (1876), 13 Cox C. C. 296). In cases of indictments or informations in the King's Bench Division for misdemeanours or offences committed in India, and for misdemeanours committed against the Acts passed for the suppression of the slave trade in any places out of the United Kingdom and within any British colony, settlement, plantation or territory, the King's Bench Division may award a mandamus to the judges of the courts of the places where the alleged offences were committed to hold a court for the examination of witnesses, and examinations taken under such a mandamus are admissible in evidence on a trial here for the specified offences (East India Company Act, 1772 (13 Geo 3, c 63), s 40, Slave Trade Act, 1813 (6 & 7 Vict c 98) s 4). There are similar provisions as to prosecutions for offences committed abroad by persons employed in the public service (Criminal Jurisdiction Act, 1802 (42 Geo 3, c 85), s 2). For an instance of evidence taken abroad under the latter Act, see *R v Pictou* (1805), 30 State Tr 225. As to the depositions of a witness examined before the justices who is dead or unable to travel, or kept out of the way by the accused, and as to the depositions taken before a coroner, and as to depositions privately taken of a witness who is ill and not expected to recover, see p 365, *ante*.

(*c*) The practice as to interrogatories and inspection of documents is governed by the Rules of the Supreme Court, which have no application to criminal cases (Ord 68, r 1, see Judicature Act, 1875 (38 & 39 Vict c 77), s 19).

(*d*) *A-G v Le Merchant* (1772), cited 2 Term Rep 201, n., *R v Purnell (al Purnell)* (1748), cited 2 Term Rep 202, n., *R v Cornelius* (1743), 2 Stra 1210, *R v Heydon* (1762), 1 Wm Bl 351.

(*e*) *Ibid*. It has been decided in one case that an order cannot be made at the instance of the defendant, on the prosecutor for the inspection of documents (*R v Holland* (1792), 4 Term Rep 691). But an order was made at the instance of the defendant in *R v Colucci* (1861), 3 F & F 103, for inspection of letters which had been seized under a search warrant and were in the possession of the prosecution. A defendant is entitled to copies of the depositions taken by the examining justices (see p 322, *ante*).

(*f*) 42 & 43 Vict c 11, ss 7, 10, see title BANKERS AND BANKING, Vol. L, p 644.

**SECT 2**  
**Method of**  
**Proof**

Evidence of  
defendant  
and wife or  
husband of  
defendant

entries in the books of a bank at which a defendant keeps an account (g)

**753** Except in certain cases (h), neither the defendant nor the wife or husband of a defendant in a criminal matter can be called as a witness for the prosecution or can be called without the defendant's consent as a witness for any defendant (i).

A defendant in a criminal matter cannot, except when a *nolle prosequi* has been entered or a verdict of not guilty been returned in respect of him, be served with a *subpœna ad testificandum* or a *subpœna duces tecum* (k)

Confessions.

**754** The inadmissibility of confessions and admissions of guilt by a prisoner in certain events hereinafter referred to is peculiar to criminal law (l)

Dying  
declarations  
Complaint  
in cases of  
rape etc  
Corrobor-  
ation

The admissibility of dying declarations and the admissibility in cases of rape and similar offences of the details of a complaint by the prosecutrix are peculiar to criminal law, and afford an exception to the ordinary rules of evidence relating to hearsay (m).

**755** There is not any general rule requiring that more than one witness should be called to establish a *prima facie* case, but corroboration of the evidence of a witness who deposes as to the material facts alleged by the prosecution is desirable and in some cases is necessary (n). The evidence of an accomplice is not sufficient, unless corroborated in some material particular (o)

Unstamped  
document

**756** A document which the law requires to be stamped, but which is unstamped, is admissible in evidence in criminal proceedings (p)

Presumptions.

**757** There are some presumptions which are peculiar to criminal proceedings and others which, though common to civil and criminal proceedings, are much more commonly applied in criminal than in civil procedure (q).

(g) *R v Kinghorn*, [1908] 2 K B 949. The order may be made by any criminal court before whom the prosecution is being conducted (*ibid*)

(h) See pp 402, 405, *post*

(i) *Ibid*

(k) *Ibid*, and *A-G v Le Merchant* (1772), cited 2 Term Rep 201, n. If a defendant is in possession of a document or thing the production of which is necessary for the proof of the case of the prosecution, he can be served with a notice to produce the document or thing, but he is not obliged to produce it, if he does not produce it after being served with a notice to produce, secondary evidence may be given of the contents of any such document or of any inscription etc on any such thing (see p 390, *post*).

(l) See p 394, *post*

(m) See pp 393, 394, *post*

(n) Two witnesses are necessary in the case of treason and of perjury and where the evidence of a child is given not on oath or affirmation. The evidence of an accomplice given for the prosecution should be corroborated. The evidence of the complainant in charges of rape and similar offences is of little weight, if not corroborated, and see pp 408, 456, 471, 494, 503, 543, 615, *post*

(o) *R v Warren* (1909), 25 T L R 633, *Re Munster*, [1894] 2 Q B 415, *R v Tate*, [1906] 2 K B 680, and see *R v M* (1908), 72 J P 214, *R v Kirkham* (1909), 25 T L R 658; *R v Mullins* (1848), 3 Cox, C C 526, followed in *R v Bradley* (1909), 73 J P 239, *R v Everest* (1909), 73 J P 269

(p) Stamp Act, 1891 (54 & 55 Vict c 39), s. 14 (4).

(q) "A presumption of any fact is an inferring of that fact from other facts that are known" (*per* ABBOTT, C J, *R v Burdett* (1820), 4 B & Ald 95, at p 161). Presumptions are sometimes divided into conclusive and irrebuttable presumptions of law (*presumptiones juris et de jure*), rebuttable presumptions of law

SUB-SECTION 2.—*Best Evidence*

## SECTION 1.

## Method of Proof

Instances of application of general rule of evidence to criminal proceedings.

**758** Apart from the points of difference to which reference has been made, the general rules of the law of evidence as to proof of facts (including facts of which the courts take judicial notice) and of documents are the same in criminal as in civil proceedings (*r*).

(*presumptiones juris*), i.e., inferences recognised by law, which “stand instead of proofs till the contrary be proved” (Gilbert, *Law of Evidence*, 6th ed., 142), and presumptions of fact or mere ordinary inferences of fact but the so called presumptions of fact are only ordinary inferences not specially recognised by law. There are two irrebuttable presumptions of law which are peculiar to criminal procedure, namely, that a child under the age of seven is incapable of committing a crime and that a boy under the age of fourteen is incapable of committing the crime of rape (see p 240, *ante*), these presumptions are conclusive in favour of the defendant. There are no irrebuttable presumptions of law in criminal cases which are conclusive against a defendant, except possibly in prosecutions for the non repair etc of highways (see p 383, *ante*). A rebuttable presumption of law is one that establishes a *prima facie* case, and which, if not rebutted, should lead to a verdict in favour of the side which establishes the presumption. Instances of such a presumption peculiar to criminal cases are the presumption that a person found in possession of stolen goods soon after the theft is guilty of larceny, or of receiving stolen goods with guilty knowledge, that an infant between the age of seven and fourteen years is *dois inapax* (see p 239, *ante*), the presumption of intention, i.e., that every man is to be deemed to have intended the natural and probable consequences of his acts (*R v Dixon* (1814), 3 M & S 11, at p 15, *R v Harvey* (1823), 2 B & O 257, at p 264, *R v Meade*, [1909] 1 K B 895, O C A, and see p 236, *ante*), is a presumption which, though not peculiar to criminal law, is more generally applicable to criminal than to civil cases, so is the presumption of the innocence of a person accused of a crime (*R v White* (1865), 4 F & F 383). The presumption of marriage from cohabitation is common to civil and criminal cases, but is not applicable on a charge of bigamy (see pp 393, note (a), 594, *post*). The presumption *omnia rite esse acta*, i.e., that a man who has acted in a public capacity was duly appointed and has properly discharged his official duties, is common to criminal and civil proceedings (for its application to criminal proceedings see *R v Gordon* (1789), 1 Leach, 515, *R v Rees* (1834), 6 O & P 606, *R v Jones* (1809), 2 Camp 131, *R v Gardner* (1810), 2 Camp 513, *R v Verdat* (1813), 3 Camp 432, *R v Howard* (1812), 1 Mood & R 187, *R v Borrett* (1833), 6 O. & P 124, *R v Murphy* (1837), 8 O & P 297, *R v Newton* (1844), 1 Car & Kir 469, *R v Townsend* (1841), Car & M 178, *R v Manwaring* (1856), Dears & B 131 at p 142, *R v Cresswell* (1876), 1 Q B D 416, O C R, *R v Stewart* (1876), 13 Cox, O C 296, at p 297, *R v Roberts* (1878), 11 Cox, O C 101, O C R, *R v Gurley* (1887), 16 Cox, O C 252, O C R, but see *R v Essex* (1857), Dears & B 369). There are some statutory presumptions which are peculiar to criminal cases, e.g., the presumption of innocence on a charge of bigamy from the fact that the husband or wife of the accused has been continually absent for seven years before the second marriage and was not known by the accused to be living within such time (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 57). There are statutory presumptions of guilt from the making or possessing etc of coining tools (Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 24), from the possession of forged instruments (Forgery Act, 1861 (24 & 25 Vict c 98), ss 13, 45), from the possession of public stores (Public Stores Act, 1873 (38 & 39 Vict c 25), s 7), from acting or behaving as the master or mistress of a disorderly house (Sunday Observance Act, 1780 (21 Geo 3, c 49), s 2), from the finding of instruments of gaming in any place suspected to be used as a common gaming house (Gaming Act, 1845 (8 & 9 Vict c 109), s 8), from being found by night in possession without lawful excuse of any instrument of housebreaking (Larceny Act, 1861 (24 & 25 Vict c 96), s 58), and see Taylor on Evidence, 10th ed., Vol I, 289.

(*r*) See title EVIDENCE. As to proof of handwriting, see Criminal Procedure Act, 1865 (28 & 29 Vict c 18), s 8, and *R v Silverlock*, [1891] 2 Q B 760, O C R.

## SECT. 2

Method of  
Proof

Rule as to  
'best  
evidence'

Thus, the rule requiring that the best evidence of which a fact is capable should be given to prove it applies to criminal cases, and makes it necessary that the contents of a written document should be proved by the production of the document alone (a), except when the written document is lost or destroyed or is in the possession of the adverse party, who does not produce it after being served with a proper notice to produce, or is in the possession of a person who is privileged to withhold it and who insists on his privilege, or where the production of the document would be physically impossible or highly inconvenient, or where the document is of a public nature and some other mode of proof has been specially substituted (t)

The rule as to the "best evidence" is confined to written documents or things on which something is written or printed or engraved. The rule does not apply to other chattels the production of which in court is not essential, and evidence can be given of the condition etc. of such chattels without their production (u)

Notice to  
produce  
document  
in possession  
of defendant.

**759** If a document of which the prosecution wishes to give evidence is in the possession of the defendant, or of a solicitor, agent, or servant of the defendant, the prosecution must serve on

(a) Gilbert on Evidence, 6th ed., 3, *Queen's Case* (1820), 2 Brod & Bing 284, 11 L.

(t) See Roscoe's Criminal Evidence, 13th ed., 2, *R v Doran* (1791), 1 Esp 127, *R v Kitson* (1853), Dears C C 187 (insurance must be proved by production of policy), *R v Hube* (1792), Peake, 160 (matter of record cannot be proved by parol evidence), *R v Rowland* (1858), 1 F & F 72 (proceedings in county court other than evidence must be proved by official documents), *R v Dillon* (1877), 14 Cox, C C 4 (in proceedings before justices information, if in writing and in existence, must be produced), and *R v Regan* (1887), 16 Cox, C C 203 (to prove that the defendant sent a telegram original of message must be produced, or its destruction proved). The mere circumstance that a written account of the fact to be proved exists does not exclude parol evidence of the fact (*R v Lyster* (1722), 16 State Tr 94, at p 214). Thus, to prove perjury in county court proceedings the judge's notes need not be produced, but the evidence given can be proved by parol (*R v Morgan* (1852), 6 Cox, C C 107), printed matter can be given in evidence without producing the manuscript (*R v Watson* (1817), 2 Stark 116, 129), evidence can be given of the resolutions proposed at a meeting without producing the paper from which the resolutions were read (*R v Sheridan* (1811), 31 State Tr 543, 671, *R v Hunt* (1820), 3 B & Ald 566, *R v Moore* (1801), 6 East, 419, n). If persons who act in a public capacity have been appointed by a document in writing, in order to prove their appointment it is not necessary to produce the document, but evidence may be given that the persons have acted in the alleged capacity (*R v Gordon* (1789), 1 Louch, 515, and cases cited on p 389, ante). As to admissions of a party relating to a written document which is not produced, see *Slatterie v Pooley* (1840), 6 M & W 664, the rule in which is applicable to criminal cases, but there seems to be no reported case of its being applied to such cases (Roscoe's Criminal Evidence, 7).

(u) *R v Francis* (1874), L R 2 C O R 128. The cases of *R v Robinson* (1865), L & Ca 604, and *R v Farr* (1864), 4 F & F 336, can hardly be regarded as authorities to the contrary. In *R v Hunt* (1820), 3 B & Ald 566, 575, parol evidence was given of the inscriptions on banners. The fact that a document is in a particular person's handwriting may be proved in a criminal case in any of the different ways in which it may be proved in a civil case, no one of such ways is in law better than another (see Taylor on Evidence, 10th ed., Vol II, p 1336). So absence of consent of the owner of property to an act can in some cases be proved by other evidence than that of the person whose consent is necessary (*R v Hazy* (1826), 2 C. & P 458, *R v Allen* (1826), 1 Mood. C. C 154).

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the defendant a notice to produce the document at the trial, and if the defendant does not produce it at the trial and proof is given tracing the document to the possession of the defendant or his solicitor etc., and showing that the notice to produce was duly served, the prosecution may give secondary evidence of the document (v)

If the defendant wishes to give evidence as to the contents of a document which is in the possession of the prosecutor, he must serve the prosecutor with a *subpoena duces tecum*. The prosecutor is not a party, for criminal proceedings are at the suit of the Crown, and a notice to produce served on the prosecutor does not enable the defendant to give secondary evidence, if the original is not produced (2)

Document in  
possession of  
prosecutor  
*Subpoena  
duces tecum*

If a defendant has been served with a notice to produce a document and he does not produce it, and the prosecution gives secondary evidence of the document, the defendant cannot afterwards give the document in evidence (a)

Secondary  
evidence.

(1) *A-G v Le Merchant* (1772), cited 2 Term Rep 201, n., *R v Ellcombe* (1833), 5 C & P 322, *R v Kitson* (1853), Deans C O 187, *R v Gordon* (1784), 1 Leach, 300, n., *R v Hunter* (1829), 4 C & P 128, *R v Elworthy* (1867), 1 R 1 C O R 103. If it is proved that a defendant read in the hearing of a witness a letter or other document or part of it, evidence can be given by the witness of what he heard without giving the defendant notice to produce (*R v Lazenby* (1722), 16 State Tr 94, at p 170, *R v Moors* (1801), 6 East, 419, n.). If copies of letters are found in the possession of the defendant and are seized, such copies may be given in evidence against him, and it is not necessary to produce the originals (*R v Francis* (1717), 15 State Tr 897, 941). A notice to produce a document known to have been destroyed is unnecessary, and secondary evidence can be given on proof of the destruction (*R v Sprugge*, cited *Hov v Hall* (1811), 11 East, 276, *R v Haworth* (1830), 4 C & P 254). Notice is not necessary to produce a duplicate original (*Philpston v Chase* (1809), 2 Camp 110, *Colling v Treweek* (1827), 6 B & C 394, *R v Watson* (1817), 2 Stark 116, 129) or a counterpart (see *Burleigh v Stribbs* (1793), 5 Term Rep 465, *Roe d West v Dams* (1806), 7 East, 363), or a notice (see *Colling v Treweek* (1827), 6 B & C 394, at p 398, *Joy v Orchard* (1799), 2 Bos & P 39, *King v Beaumont* (1822), 3 Brod & Bing 288). It is not necessary to serve a notice to produce a document when, from the nature of the case, the defendant knows that he is charged with its possession, e.g., when the defendant is charged with stealing the document (*R v Aitches* (1784), 1 Leach, 294, compare *Colling v Treweek*, *supra*, per BAYLEY, J., at p 398, and *Leeds v Cook* (1803), 4 Esp 256), if a defendant is charged with forging a document, and the document is in his possession, a notice to produce is necessary (*R v Haworth* (1830), 4 C & P 254, *R v Fitzsimons* (1869), 4 I R. C L 1). In an indictment against a solicitor for perjury in swearing that there was no draft of a certain document notice to produce the draft is necessary (*R v Elworthy* (1867), 1 R 1 C O R 103). If a document is last seen in the possession of a defendant, it lies on him to trace the document out of his possession (*R v Thistlewood* (1820), 33 State Tr 682, per ABBOTT, C J., at p 768). A notice to produce need not be in writing, but generally is, and in criminal cases, if the defendant is in custody and has no solicitor, it must be in writing. It may be served on the defendant himself or upon his solicitor (*A-G v L Merchant* (1772), 2 Term Rep 201, n.). It must be served within a reasonable time of the trial, i.e., within such time as to enable the defendant to get the document from the place where it is (*R v Ellcombe* (1833), 5 C. & P 322, *R v Haworth* (1830), 4 C & P 254, *R v Kitson* (1853), Deans C O C. 187, *R v Barker* (1858), 1 F & F 326, *Hughes v Budd* (1840), 8 Dowl 315). A notice to produce should not be served on a Sunday (*Hughes v Budd*, *supra*, per PATTERSON, J., at p 317).

(2) *Wills on Evidence*, 2nd ed., p 359

(a) *Doe v Hodgson* (1840), 12 Ad & EL 135; *Laxton v Reynolds* (1854), 18

## SECT 2

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If a document is in existence and its production is procurable by a *subpoena duces tecum*, secondary evidence cannot be given of it, unless such a *subpoena* is served on the person who has the document and he refuses on a good ground of privilege to produce the document (b)

If the person who has possession of the document is outside the United Kingdom, and all reasonable attempts have been made to procure the document and the person refuses to give it up, secondary evidence may, it seems, be given (c)

Secondary  
evidence of  
documents  
that cannot  
be produced

**760** If it is proved that it is impossible or highly inconvenient to produce a document or a thing on which there are inscriptions or representations which it is desired to prove, secondary evidence may be given of such document or thing (d)

On the same principle secondary evidence may be given of such a document or thing, if the original is in a foreign country by the law of which it cannot be removed (e).

Proof of  
public  
documents  
Copies.

**761** If a document is of a public nature, it is admissible in evidence on its mere production from the proper custody without further proof (f) Copies of such documents, if officially certified, are by various statutes made admissible in evidence in the place of the originals (g).

Jur 963 But if the defendant does not produce the document when it is called for, and the prosecution tenders secondary evidence, the defendant is not precluded from then producing a document which he alleges is the original and from asking the witness who is giving secondary evidence whether it is not the original and, on the witness denying it, from giving evidence to prove that it is the original. The judge is bound in such a case to hear the evidence, and, if he is satisfied that it is the original, must exclude the secondary evidence (*Boyle v Wiseman* (1855), 10 Exch 647) The effect of such evidence being given, if the judge believes it, is to let in the document which the defendant alleges to be the original (*ibid*)

(b) See *R v Reason* (1722), 1 Stra 499, at p 500, *Calcraft v Guest*, [1898] 1 Q B 759, O A, *R v Dixon* (1765), 3 Burr 1687

(c) See *Boyle v Wiseman* (1855), 10 Exch 647, per PARKER, B, at p 649

(d) See *R v Hunt* (1820), 3 B & Ald 566, where secondary evidence was given of inscriptions and devices on banners carried at a public meeting (see, as to this case, *R v Hinley* (1843), 1 Cox, C O 12, per MAULE, J, at p 13, and see *Doe v Cole* (1834), 6 C & P 359, at p 360, *Jones v Turleton* (1842), 9 M & W. 675, at p 677 *Mortimer v McCallan* (1840), 6 M & W 58, at p 68) But in *R v Edge* (1842), Wills on Circumstantial Evidence, 5th ed, pp 280, 288, MAULE, J., refused to allow secondary evidence of the contents of a coffin-plate in a case where a body had been exhumed. The ground of this decision was that the coffin-plate was in the circumstances removable and might have been produced (see *R v Hinley* (1843), 1 Cox, C O 12, at p 13) But in ordinary cases, where there has been a burial and no exhumation, secondary evidence of the inscription on a coffin-plate would be admitted

(e) *Alton v Furnival* (1834), 1 Cr M & R 277

(f) For a list of such public documents, see Taylor on Evidence, 10th ed., Vol. II., p 1150, and title EVIDENCE

(g) As to the statutes which expressly provide for the proof of particular public documents by means of copies, see Taylor on Evidence, 10th ed., Vol. II., p 1153; Wills on Evidence, 2nd ed., Appendix A, "Public Documents," p 422, and title EVIDENCE. Any public document for the proof of which by means of a copy there is no statutory provision may be proved by an examined copy or extract signed and certified as a true copy or extract by the officer to whose custody the original is intrusted (Evidence Act, 1851 (14 & 15 Vict. c. 99),

Public documents are documents drawn up by public functionaries in the executive, legislative, and judicial departments of Government with reference to the transactions which they are required to enter in the course of their public duty and which occur within the circle of their own personal knowledge and observation (*h*)

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### SUB-SECT. 3—Hearsay Evidence

**762** The rule as to the inadmissibility of hearsay applies in general to criminal trials. The exceptions to the rule also apply (*i*), but there are also two exceptions which are peculiar to criminal cases, namely, (1) dying declarations and (2) complaints in cases of rape and similar offences.

Hearsay.

Dying declarations are only admissible where the death of the person who made them is the subject of the charge (*h*)

s 14) Proclamations, treaties, and other acts of state of any foreign State or of any British Colony, and all judgments and other judicial proceedings, and all affidavits, pleadings and other legal documents filed or deposited in any such court, may similarly be proved by authenticated copies (*ibid*, s 7). A conviction or acquittal of a person charged with an indictable offence may be proved by a copy of the record with the formal parts omitted, certified, or purporting to be certified, by the officer having custody of the records of the court where the conviction or acquittal took place (*ibid*, s 13), see also as to proof of conviction, Criminal Procedure Act, 1865 (28 & 29 Vict c 18), s 6, Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 18. Any proclamation, order, or regulation issued by the Sovereign or by the Privy Council, either before or after 25th June, 1868, and any proclamation, order, or regulation issued by the Treasury, the Admiralty, the Secretaries of State, the Board of Trade, and the Local Government Board may be proved by the production of a copy of the *Gazette* purporting to contain such proclamation etc., or by the production of a copy of such proclamation etc., purporting to be printed by the Government printer, or under the superintendence or authority of the Stationery Office, or by a copy or extract purporting to be certified (Documentary Evidence Act, 1868 (31 & 32 Vict c 37), s 2, see also Documentary Evidence Act, 1882 (45 Vict c 9), and Documentary Evidence Act, 1895 (58 Vict c 9))

(*h*) Taylor on Evidence, 10th ed., Vol. II, p 1073

(*i*) For instances of such exceptions in criminal cases, see *R v Bliss* (1837), 7 Ad & El 550 (admissions of deceased persons against interest), *R v Buckley* (1873), 13 Cox, C C 293 (statements by a deceased person in the course of his employment), *R v Blandy* (1752), 18 State Tr 1118, 1135, *R v Johnson* (1847), 2 Car & Kir. 364, *R v Conde* (1867), 10 Cox, C C 547, *R v Palmer* (1856), Shorthand notes, pp 26, 38, 42 (evidence of Elizabeth Mills, Dr Savage, and William Stevens), *R v Glover* (1848), 10 Cox C C 471, 473, approved in *R v Perry* (1909), 2 Cr App Rep 270, *Avson v Kinnaird (Lord)* (1805), 6 East, 188, at p 198 (statements by a person as to his health and symptoms), *R v Berger*, [1894] 1 Q B 823, *R v Antrobus* (1835), 2 Ad & El 788, 794, *R v Bedfordshire (Inhabitants)* (1855), 4 E & B 535, at p. 541 (evidence of reputation on a question of public right). Evidence of reputation to prove a marriage is available in all criminal cases, except in bigamy (*R v Atkinson* (1814), 1 Russell on Crimes, 6th ed., p 159, *R v Woodward* (1838), 8 C & P 561). In bigamy the prosecution cannot prove the first marriage by reputation (*Catherwood v Caslon* (1844), 13 M & W 261, at p 265), but even in bigamy, if the defendant sets up as a defence that at the time of the alleged "first marriage" the person with whom he or she went through the ceremony of marriage was already married and had a husband or wife alive, the defendant can prove by reputation the marriage which he sets up (*R v Wilson* (1862), 3 F & F 119)

(*k*) *R v Mead* (1824), 2 B & C 605, *R v Hutchinson* (1822), 2 B & C 608, n., *R v Lloyd* (1830), 4 C. & P 233; and see p 589, *post*. In *R v Edmunds* (1809), 25 T L R 608, O C A, depositions of a woman, taken when she expected to recover and on a charge of attempted murder, were held admissible on a charge of murdering the woman.



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The admissibility of the particulars of a complaint made soon after the commission of an alleged offence in the absence of the defendant by the person in respect of whom a crime is alleged to have been committed is peculiar to rape and similar offences (*l*). In other cases the fact of a complaint having been made is admissible, but the details are not (*m*).

**SUB-SECT 4—Confessions by Defendant**

Admissions or  
confessions  
by defendant  
before trial

**763** All statements relevant to the issue which are made by a party (*n*) can be proved in evidence against the party who made them, unless they are privileged from disclosure (*o*), subject to this exception, that admissions or confessions of guilt made by a defendant before his trial can only be proved against him, if they were made freely and voluntarily *i e*, without being induced by hopes held out or fear or threats caused or used by a person in authority.

Only  
admissible  
if made  
voluntarily

In giving evidence of such admissions or confessions it lies upon the prosecution to prove affirmatively to the satisfaction of the judge who tries the case that such admissions were not induced by any promise of favour or advantage or by the use of fear or threats or pressure by a person in authority (*p*).

Person in  
authority

By a person in authority is meant any magistrate (*q*), any police or other officer or person having custody of the defendant (*r*), the prosecutor and any person acting on behalf of the prosecutor for the purpose of having the defendant in custody or preferring a complaint against him (*s*).

If the inducement is made by a person not in authority in the presence of a person in authority, and is acquiesced in by the person in authority, the confession made in consequence of such an

(*l*) *R v Lillyman*, [1896] 2 Q B 167, C C R, *R v Osborne*, [1905] 1 K B 551, C C R, *Beatty v Cullingworth* (1896), 60 J P 740, *R v Rowland* (1898), 62 J P 459, *R v Kingham* (1902), 66 J P 393, *R v Hoodless* (1900), 61 J P 282, *R v Ingrey* (1900), 64 J P 107, *R v Rush* (1896), 60 J P 777, see p 613, *post*.

(*m*) See *R v Wink* (1834), 6 C & P 397, *R v Ridsdale* (1837), Starkie on Evidence, 4th ed., 469. But see *R v Folley* (1896), 60 J P 569.

(*n*) See as to proof of handwriting, Criminal Procedure Act, 1865 (28 & 29 Vict c 18), s. 8, *R v Silverlock*, [1894] 2 Q B 766, C C R, and title EVIDENCE.

(*o*) See title EVIDENCE.

(*p*) 2 East, P C 657, *R v Thompson*, [1893] 2 Q B 12, C C R. If a confession "proceeds from remorse or a desire to make reparation for the crime, it is admissible, if it flows from hope or fear excited by a person in authority, it is inadmissible" (*ibid*, per CAVE, J, at p 15, and see *R v Warwickhall* (1783), 1 Leach, 263). As to a compulsory examination under s 17 of the Bankruptcy Act, 1883 (46 & 47 Vict 52), see note (*q*) on p 399, *post*.

(*q*) *R v Cooper* (1833), 5 C & P 585.

(*r*) See *R v Boswell* (1842), Car & M 584, *R v Shepherd* (1836), 7 C & P 579, *R v Doherty* (1874), 13 Cox, C C 23, 24, *R v Enoch* (1833), 5 C & P 539, *R v Windsor* (1864), 4 F & F 360.

(*s*) *R v Thompson* (1782), 1 Leach, 291, *R v Jones* (1809), Russ & Ry 152, *R v Richards* (1832), 5 C & P 318, *R v Hearn* (1841), Car & M 109, *R v Huss* (1784), 1 Leach, 293, n, *R v Simpson* (1834), 1 Mood C C 410, *R v Uphurch* (1836), 1 Mood C C 465, *R v Partridge* (1836), 7 C & P 551, *R v Hewett* (1842), Car & M 534, *R v Fennell* (1881), 7 Q B D 147, C C R, *R v Ross* (1898) 18 Cox, C C 717, C C R, *R v Thompson*, [1893] 2 Q B 12, C C R. At one time it seems to have been thought that a confession made in consequence of an inducement by any person was inadmissible (see *R v Dunn* (1831), 4 C. & P 543, *R v Slaughter* (1831), 4 C & P 544 n. *R v*



inducement is just as inadmissible as if it had been made by the person in authority (i)

An inducement made not to the accused himself, but to someone else, with the expectation that it will be communicated to the accused, may have the effect of making a confession inadmissible, unless it is shown that the confession was not brought about by the inducement (a)

It is for the judge in each case to decide whether on the facts the confession is or is not admissible (b)

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*Thomas* (1834), 6 C & P 353, *R v Walkley* (1833), 6 C & P 170, and see *R v Spencer* (1837), 7 C & P 776, *R v Kingston* (1830), 4 C & P 387, but these cases cannot now be considered as authorities (see *R v Taylor* (1830), 8 C & P 733). A master of a servant is not a person in authority with regard to this rule, if the master is not the prosecutor, and if the charge in respect of which the confession is made has no relation to the person or property of the master or of any member of his family (*R v Moore* (1832), 2 Den 522, and see *R v Sleeman* (1853), Denia C C 249). In *R v Simpson* (1834), 1 Mood C C 410, a confession made in consequence of threats and promises by the prosecutor's relations was held inadmissible. In cases of felony anyone can arrest the offender (see p. 296, *ante*), and therefore anyone who threatens to imprison a person accused of felony puts himself in the position of a prosecutor within the meaning of the rule and is a person in authority (*R v Parratt* (1831), 4 C & P 570).

(i) *R v Laughler* (1816), 2 Car & Kir 225, *R v Taylor* (1839), 8 C & P 733, see *R v Pountney* (1856), 7 C & P 302, but see *R v Row* (1809), Russ & Ry 153, *R v Rerie* (1872), L R 1 C C R 362. But a statement made by one of two prisoners to the other in the presence of the prosecutor and a constable ("You had better tell Mr —— the truth") does not come within the rule and does not make a subsequent confession by the other prisoner inadmissible, for the confirmation of a person in authority cannot be necessarily inferred in such a case (*R v Parker* (1861), L & C 42).

(a) *R v Thompson*, [1893] 2 Q B 12, C C R. See *R v Nute*, cited *R v Hewitt* (1842), Car & M 534, at p. 535.

(b) Confessions have been held inadmissible in the following cases:—*R v Thompson* (1763), 1 Leach, 291, where the person who apprehended the accused said to him, "Unless you give me a more satisfactory account, I shall take you before a magistrate"; *R v Parratt* (1831), 4 C & P 570, where the captain of a vessel in which the accused was a sailor said, "If you do not tell me who your partner was, I will commit you to prison"; *R v Richards* (1832), 5 C & P 318, where the prosecutrix said to the accused that if she did not tell all about it that night, the constable would be sent for next morning; *R v Heurn* (1841), Car & M 109, where goods had been stolen and the owner of the goods, who was also the master of the accused, said that if he did not tell the truth "about the things that were found in the pump," he would send for the constable to take her; *R v Luckhurst* (1853), Denia C C 218, where the prosecutor said to the prisoner, "If you don't tell me, I will give you in charge to the police, till you do tell me"; *R v Coley* (1868), 10 Cox, C C 536, where an inspector of police told the prisoner that "if she did not tell, she might get herself into trouble, and that it would be the worse for her"; *R v Cass* (1751), 1 Leach, 293, n, where the prosecutor said to the accused, "If you tell me where they" (i.e. the stolen goods) "are, I will be favourable to you"; *R v Kingston* (1830), 4 C & P 387, where the surgeon who was called to see a person whom the defendant was accused of having poisoned said to the defendant, "You are under suspicion of this, and you had better tell all you know"; *R v Partridge* (1836), 7 C & P 551, where the prosecutor said to the accused, "I should be obliged to you, if you would tell us what you know about it, if you will not, we of course can do nothing"; *R v Garner* (1818), 1 Den 329, where a doctor in the presence of the master and mistress of the prisoner, who was accused of poisoning her mistress, said it would be better for her to speak the truth (and see *R v Simpson* (1834), 1 Mood C C 410), *R v Kennell* (1881),

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7 Q. B. D. 147, O. O. R., where the prosecutor said to the accused "— tells me you are making housebreaking implements, if that is so, you had better tell the truth, it may be better for you"; *R v Jones* (1809), Russ & Ry 152, where the prosecutor said to the accused that he only wanted his money, and if the accused gave him that, he might go to the devil, if he pleased, *R v Windsor* (1864), 4 F. & F. 360, where the prisoner said to the searcher of female prisoners, who was with her in a room in the gaol to search her, "If I tell the truth, shall I be hung," and the searcher said, "No, nonsense, you will not be hung", *R v Enoch* (1838), 5 O. & P. 539, where a woman who had charge of the prisoner, who was accused of murdering her child, told her she had better tell the truth, or it would lie upon her and the man would go free, *R v Doswell* (1842), Car & M. 584, where a prisoner made a confession after a constable had given him a handbill offering a reward for the discovery of a murder and a recommendation of pardon to an accomplice who did not actually commit the murder (in this case the prisoner mentioned that he made his confession because Government had offered a free pardon, if the offer of a pardon does not induce the confession, the confession is admissible, *R v Dingley* (1845), 1 Car & Kir, 637, see *R v Blackburn* (1853), 6 Cox, O. O. 333, *R v Hall* (1790), 2 Leach, 589, n., *R v Gills* (1866), 11 Cox, O. O. 69, *R v Hewett* (1842), Car & M. 534 where the prosecutrix said to the prisoner that she would forgive the prisoner if the prisoner spoke the truth (this was held to make inadmissible confessions made subsequently, but under the influence of the original promise); and see *R v Mansfield* (1881), 14 Cox, O. O. 639, *R v Warringham* (1831), 2 Don. 447 n., where the prosecutor said to a prisoner accused of larceny, "It is of no use to deny, I have seen the piece of goods at the station house," and on the prisoner admitting that he had "done it," said it would be best for him if he would tell how it was transacted, *R v Doherty* (1871), 13 Cox, C. C. 23, where a police constable said to the prisoner, "It is better for you to tell the truth and not put people to the extremities you are doing" (this was held to make inadmissible a statement made on the same day about eight hours afterwards to another constable), and see *R v Bate* (1871), 11 Cox, O. O. 686, *R v Laughter* (1846), 2 Car & Kir. 225, *R v Shepherd* (1836), 7 O. & P. 579, *R v Thompson*, [1893] 2 Q. B. 12, O. O. R., where the prosecutor said to the prisoner's brother, "It will be the right thing for your brother to make a statement", *R v Rose* (1898), 67 L. J. (Q. B.) 289, O. O. R., where the prosecutor said to the prisoner, who was accused of stealing corn, "You had better tell me all about the corn that is gone" Such expressions as "You had better tell the truth," or "It is better for you to tell the truth," when uttered by a person in authority, have acquired a sort of technical meaning importing either a threat or a benefit (*R v Jarvis* (1867), L. R. 1 C. O. R. 96, per KELLY, O. B., and WILLES, J., at p. 99).

Confessions have been held admissible in the following cases.—*R v Row* (1809), Russ & Ry 163, where persons who had nothing to do with the apprehension, prosecution, or examination of the prisoner admonished him in the presence of a constable to tell the truth, and see *R v Gibbons* (1823), 1 O. & P. 97, *R v Moore* (1852), 2 Den. 522, *R v Sleeman* (1853), Dears O. O. 249, *R v Parler* (1861), Le & Ca. 42, *R v Reeve* (1872), L. R. 1 C. O. R. 362, *R v Gilham* (1828), 1 Mood O. O. 186, where the confession was made in consequence of the persuasion of a clergyman, *R v Tyler* (1823), 1 O. & P. 129, where the inducement was by a person not in authority and the confession to a person in authority, *R v Clewes* (1830), 4 O. & P. 221, where a confession or statement was made after the inducement ceased to operate, and see *R v Richards* (1832), 5 O. & P. 318, *R v Howes* (1834), 6 O. & P. 404, *R v Dingley* (1845), 1 Car & Kir. 637, *R v Rosier* (1821), Phillips on Evidence, 10th ed., Vol. I., 414, *R v Lingate* (1815), Phillips on Evidence, 10th ed., Vol. I., 414; *R v Jarvis* (1867), L. R. 1 C. O. R. 96, where a person in authority advised the prisoner on moral grounds to speak the truth, and see *R v Wild* (1835), 1 Mood O. O. 452, *R v Reeve* (1872), L. R. 1 C. O. R. 362. A confession is admissible, if the inducement has no reference to the defendant's escape from the charge brought against him (*R v Lloyd* (1834), 6 O. & P. 393, *R v Green* (1834), 6 O. & P. 655), or where the words used by the person in authority import no promise or threat (*R v Jones* (1872), 12 Cox, C. C. 241, O. O. R.) And a confession was held to be admissible, where it was made after a police constable had told the prisoner that "he need not say anything to

A defendant may be convicted on his own confession without any corroborating evidence (c).

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**764** A statement made by another person by the authority of the prisoner is evidence against the prisoner as much as if he had made the statement himself (d).

**765** If there are several persons accused of a crime and one of them makes confessions or admissions, such confessions or admissions are evidence only against the party who made them (e), but where

Confession by  
one or two  
or more  
defendants.

criminate himself," but "what he did say would be taken down and used as evidence against him", see *R v Baldry* (1852), 2 Den 430, disapproving of the following cases—*R v Drew* (1837), 8 O & P 140, *R v Morton* (1843), 2 Mood & R 514, *R v Furlly* (1844), 1 Cox, O C. 76, *R v Harris* (1844), 1 Cox, O C 106. As to confessions made under the influence of drink, see *R v Spilsbury* (1835), 7 O & P 187, *R v Serton* (1822), 3 Russell on Crimes, 482. The mere use of artifice to obtain a confession does not make the confession inadmissible, but a confession so obtained has very little weight (*R v Thomas* (1846), 7 O & P 345, *R v Shaw* (1844), 6 O & P 372, *R v Derrington* (1826), 2 C & P 418, *R v Burley* (1818), 1 Phillpotts on Evidence, 10th ed. 420). What a prisoner is overheard to say to another person or to himself is receivable in evidence against him, but see *per AIDRSON, B.*, *R v Simons* (1834), 6 C & P 340, at p. 541, and *Earle v Picken* (1833), 5 O & P 542, n. Statements made by a defendant in answer to questions put by a police constable or prosecutor are not *ipso facto* inadmissible (*R v Reason* (1872), 12 Cox, O C 228, *R v Brackenbury* (1893), 17 Cox, O C 628, *R v Hirst* (1896), 18 Cox, O C 374, *Rogers v Hawken* (1898), 67 J. J. (Q. B.) 526), but where such statements are made under pressure by the police constable or prosecutor, as where there is improper cross examination of a prisoner in custody, or an attempt made to trap the accused or to manufacture evidence, such statements may be rejected as inadmissible (*R v Male* (1893), 17 Cox, O C 689, *R v Histed* (1898), 19 Cox, O C. 16, *R v Morgan* (1895), 59 J. P. 827, *R v Knight* (1903), 20 Cox, O C 711). A constable may ask a suspected person questions before taking him into custody, to ascertain whether there are grounds for apprehending him, a constable should not ask questions of a person in custody (*R v Berriman* (1854), 6 Cox, O C 388, *R v Reason* (1872), 12 Cox, O C 228), but the mere fact that a statement is made in reply to a question put by a constable does not make the statement inadmissible (*R v Best*, [1909] 1 K. B. 692, O C A., disapproving of *R v Gavin* (1885), 15 Cox, 658). A magistrate has no right to ask the accused any questions, except questions incidental to the conduct of the examination, *e.g.*, whether the accused wishes to cross-examine a witness, or to give evidence, and the statutory questions prescribed by s. 18 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), unless the accused gives evidence under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), if the magistrate does interrogate an accused who does not so give evidence, the answer of the accused is inadmissible as evidence against him (*R v Berriman* (1854), 6 Cox, O C 388, *R v Pettit* (1850), 4 Cox, O C 164, *R v Wilson* (1817), Holt (N. P.), 597). The cases of *R v Rees* (1836), 7 C & P 568, and *R v Bartlett* (1837), 7 O. & P. 832, cannot now be regarded as authorities to the contrary.

(c) But see note (c) on p. 378, *ante*. As to treason, see *R v Tong* (1662), Fort. 240, *R v Francia* (1716), 1 East, P. C. 133, *R v Willie* (1710), Fort. 241, *R v Vaughan* (1696), Fort. 240, *R v Smith* (1708), Fort. 242.

(d) *R v Mallory* (1831), 13 Q. B. D. 33, O C R. But see *R v Dummer* (1880), 14 Cox, O C 486, O C R., where it was held that a letter written by a solicitor "in consequence of" an interview with the prisoner was not equivalent to a letter written by the solicitor by the instructions of the prisoner, and was therefore not evidence against the prisoner. An act done by an agent will not make the principal criminally responsible, unless the principal authorised the act (see *Melville's (Lord) Case* (1806), 29 State Tr. 550, at 764).

(e) *R v Tong*, *supra*, *R v Boroski* (1682), 9 State Tr. 1, at 23. See *R v Fletcher* (1829), 1 Lew. C. C. 107. In an indictment against an accessory the

**SECT 2**  
**Method of**  
**Proof**

confessions or admissions are made by an accomplice in the presence of the other party in such circumstances that the other party has an opportunity of contradicting such statements at once so far as they concerned himself and does not contradict them, then the statement of the accomplice becomes evidence against such other party, and a confession may be inferred from the conduct and demeanour of the prisoner when he hears such a statement (*f*)

Statement  
made in the  
presence  
of the  
defendant

**766** Any statement made in the presence of the accused is evidence against him, if he had an opportunity of contradicting it at once and did not, and if the circumstances are such that he would naturally be expected to contradict it, if he did not admit it (*g*)

Evidence of this kind is not admissible at all against the accused, when the statement is made in such circumstances that he had no opportunity of contradicting it at once, *e.g.*, if it is made when the prisoner is before a magistrate (*h*)

The whole of  
a confession  
must be given  
in evidence

**767** If evidence of a confession by an accused person is given on behalf of the prosecution, the whole of the confession must be used, the prosecution must take the whole of it together, and cannot select one part and leave another (*i*) But if part of a statement tends to show the guilt of the accused and part of it to show his innocence, the jury may, if they choose, believe the part which is against him and disbelieve that which is in his favour (*k*)

Facts dis-  
covered by  
means of  
a statement  
which is  
inadmissible  
may be  
proved

Even if a confession is inadmissible in evidence, yet facts the knowledge of which has been obtained by means of such inadmissible confession may be proved on behalf of the prosecution (*l*)

confession of the principal is not evidence of the guilt of the principal as against the accessory (*R v Turner* (1832), 1 Mood C C 347). As to evidence on a charge of murder of the dying declarations of the murdered person who is *particeps criminis*, see *R v Tinchler* (1781), 1 East, P C 354. Statements made, like acts done, by one of several accomplices or co-conspirators in pursuance of a common design, are evidence against the others (*R v Watson* (1817), 2 Stark 116, at p 140, *R v Desmond* (1868), 11 Cox, C C 146, *R v Blake* (1844), 6 Q B 126), *aliter* of statements which are made not in pursuance of the common design (*R v Blake, supra*)

(*f*) Philipps on Evidence, 10th ed Vol I, 405, *R v Bromhead* (1906) 71 J P 103, C C R. See *R v Mule* (1893), 17 Cox, C C 689 *R v Hurl* (1896), 18 Cox C C 374, *R v Pearson* (No 1) (1908) 72 J P 449

(*g*) See *R v Smithes* (1832), 5 C & P 332, *R v Bartlett* (1837), 7 C & P 832, where the rule was applied to a statement made by a wife in the presence of her husband, although the wife could not be called against her husband to prove such a statement, but see *R v Smith* (1897), 18 Cox, C C 470, *Wiedemann v Walpole*, [1891] 2 Q B 534, C A, *per* Lord Esher, M R, at p 537, *R v Pearson, supra*

(*h*) *R v Appleby* (1821), 3 Stark 33, *Melen v Andrews* (1829), Mood & M 336, *R v Turner* (1832), 1 Mood C C 347, and see *R v Smith* (1897), 18 Cox, C C 470

(*i*) *R v Jones* (1827), 2 C & P 629

(*k*) *R v Higgins* (1829), 3 C & P 603, *R v Clewes* (1830), 4 C & P 221, *R v Steptoe* (1830) 4 C & P 397

(*l*) *R v Warrickshall* (1783), 1 Leach, 263. In *R v Griffin* (1809), Russ & Ry 151, the prosecutor was not allowed to prove a confession by the prisoner on a charge of larceny, but was allowed to prove "that the prisoner brought

**768** If a confession has been reduced to writing, and it is written or signed by the accused, the writing must be given in evidence and, if proved, read by the officer of the court. If it is not written by the accused, but taken down by someone else and not signed by the prisoner, the confession can only be proved by the person who took it down, who must state what the accused said, and may use the writing to refresh his memory (*n*)

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Method of  
Proof

Written  
confession

**769** At the preliminary examination into a charge before examining justices the defendant is asked at the close of the case for the prosecution whether he wishes to say anything in answer to the charge and is expressly cautioned. Any statement that the defendant then makes, if it appears on the depositions, may be given in evidence against him on his trial, and any statement made by him, either before or after he is so asked, may also be given in evidence against him, if it appears on the depositions (*n*)

Statement of  
defendant  
before  
examining  
justices.

Any evidence which a defendant gives on oath or affirmation before the examining justices under the Criminal Evidence Act, 1898 (*o*), may also be used against him on his trial (*p*)

Evidence  
given by  
defendant  
admissible

Any evidence which a defendant has given on a former occasion as a witness is evidence against him, if properly proved (*q*),

him a guinea and a bank note, which he gave up to the prosecutor as one of the notes he had stolen.' But see *R v Jones* (1809), Russ & Ry 132, *R v Jenkins* (1822), Russ & Ry 492. If a prisoner makes a statement describing where articles connected with a crime are to be found and such articles are found in consequence of the statement, the finding of the articles may be proved, although the statement itself may be inadmissible.

(*m*) *R v Laver* (1722), 16 State Tr 94, 214, *R v Suatkins* (1831), 1 C & P 518, at p 550, see *R v Gay* (1835), 7 C & P 230.

(*n*) See p 316, *ante*. Such statements, however, if made by a prisoner who does not give evidence, but who is interrogated: the magistrates are inadmissible (*R v Berriman* (1854), 6 Cox C C 346 and see p 397, *ante*).

(*o*) 61 & 62 Vict c 36, and see p 317 *ante*.

(*p*) *R v Bird* (1898), 19 Cox, C C 180, C C R.

(*q*) Depositions of the defendant who is called as a witness at a coroner's inquisition are evidence against him (*R v Bateman* (1866), 1 L & P 1068, *R v Colmer* (1864), 9 Cox, C C 506, but see *R v Wheeler* (1848), 8 C & P 250, *R v Owen* (1839), 9 C & P 83, 239, *R v Sandys* (1811), Cur & M 345). Depositions of the defendant upon an inquiry before commissioners appointed to investigate the origin of fires (in Quebec) and authorised to examine witnesses on oath, were held by the Privy Council to be admissible in evidence against him on his trial for arson (*R v Cote* (1873), 1 L R 4 P C 599), and see *R v Goldshede* (1844), 1 Car & Kir 607, *R v Chadley* (1860), 8 Cox, C C 365, *R v Laurent* (1898), 62 J P 250. Under the bankruptcy law (see Bankruptcy Act, 1893 (46 & 47 Vict c 52), s 17 (3) and title BANKRUPTCY, Vol II, p 73) a bankrupt in his examination in bankruptcy is bound to answer all questions touching matters relating to his trade, dealings, or estate, or which might tend to disclose any secret grant, conveyance or concealment of his lands, tenements, goods, money or debts, and he cannot object that his answers may incriminate him, and his answers though tending to incriminate him, may be given in evidence against him on a criminal charge, except in a prosecution for the misdemeanours mentioned in s 1 of the Larceny Act, 1901 (1 Edw 7, c 10), and in ss 77 to 84 of the Larceny Act, 1861 (24 & 25 Vict c 96), see Larceny Act 1861 s 85, Larceny Act, 1901, s 2, and Bankruptcy Act, 1890 (53 & 54 Vict c 71) s 27, and see *R v Scott* (1856), Deares & B 47, *R v Cross* (1856), Deares & B 68, *R v Robinson* (1867), 1 L R 1 C C R 80, *R v Hillum* (1872), 12 Cox C C

**SECT 2**  
**Method of**  
**Proof**

unless the defendant was wrongly compelled to answer questions tending to criminate him which he objected to answer (r), or unless there is some statutory provision making such evidence inadmissible in other proceedings (s)

**SECT 3.—Competency of Witnesses in Criminal Proceedings.**

**SUB-SECT 1—In General**

**Competency**  
**of witnesses**  
**in civil**  
**proceedings**

**770** All persons are competent to give evidence except (1) children of such tender years that they have not sufficient intelligence to testify or a proper appreciation of the duty of speaking the truth, (2) idiots and insane persons who at the time of being tendered as witnesses are mentally incapable of testifying, (8) deaf and dumb persons, if they are unable by signs or otherwise to understand what is said to them or to communicate their thoughts to others, and (4) other persons who from temporary causes, such as illness and drunkenness, are for the time incapable of understanding questions and of giving a rational account of events (t)

171, *R v Cherry* (1871), 12 Cox, C C 32, *R v Huddop* (1872), L R 2 C C R 3, *R v Erdheim*, [1896] 2 Q B 260, C C R. A bankrupt, when so examined might object to answer a question on the ground that it does not relate to the matter on which he may be examined, but, if he does not so object and answers a question which does not relate to such matters, his answer may be proved against him in other proceedings (*R v Sloggett* (1856), Dears C C 656). A witness, other than the bankrupt examined under s 17 of the Bankruptcy Act, 1883 (46 & 47 Vict c 52), may refuse to answer questions on the ground that his answers may incriminate him (*Re Frith, Ex parte Schofield* (1877), 6 Ch D 230, C A). The answers of a bankrupt in an examination under s 24 or s 27 of the Bankruptcy Act, 1883 (46 & 47 Vict c 52), cannot be used against him in prosecutions for the misdemeanours mentioned in s 1 of the Larceny Act, 1901, or ss 77—84 of the Larceny Act, 1861 (Bankruptcy Act, 1890 (53 & 54 Vict c 71), s 27 (2)). *Quære*, whether such answers can be used in prosecutions for other offences, see Archbold, Criminal Pleading, 23rd ed, p 329. The exception in the Bankruptcy Act, 1890 (53 & 54 Vict c 71), s 27 (2), as regards the misdemeanours specified above, does not apply to a statement of affairs filed by a bankrupt under the Bankruptcy Act, 1883 (46 & 47 Vict c 52), s 16, and such a statement may be used in evidence against him in a prosecution under ss 77—84 of the Larceny Act, 1861 (24 & 25 Vict c 96), and s 1 of the Larceny Act, 1901 (1 Edw 7, c 10) (*R v Pike*, [1902] 1 K B 552, C C R). As to a bankrupt's balance-sheet being used in evidence against him, see *R v Britton* (1833), 1 Mood. & R 297, *R v Wheeler* (1838), 2 Mood C C 45, 51.

(r) *R v Garbett* (1847), 1 Den 236, see *R v Merceron* (1818), 2 Stark.

(s) Thus under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict c 51), s 59 (1) (b), an answer by a person to a question put by or before any election court is not, except in the case of criminal proceedings for perjury in respect of such evidence, admissible in evidence against him in any criminal proceeding (Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict c 70), ss 30, 35, and *R v Buttle* (1870), L R 1 C C R 248, *R v Slater* (1881), 8 Q B D 267). See also Exhibition Models Act, 1863 (26 & 27 Vict c 119), s 5, Land Transfer Act, 1875 (38 & 39 Vict c 87), s 103, Explosive Substances Act, 1883 (46 Vict c 3), s 6 (2), Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 19 (2).

(t) It has been said that a person under sentence of death is civilly dead, and therefore incompetent as a witness (*R v Webb* (1867), 11 Cox, C C 133), but see Evidence Act, 1843 (6 & 7 Vict c 85), s 1, Forfeiture Act, 1870

SECT. 3.  
Com-  
petency of  
Witnesses  
in Criminal  
Proceed-  
ings

Persons who are not incompetent for the specified reasons to give evidence are compellable to give evidence (a), unless they are privileged from making disclosures (b). But the defendant in a criminal prosecution and the husband or wife of the defendant are incompetent witnesses for the prosecution except in certain cases (c), and in most criminal proceedings (d) are only competent witnesses for the defence subject to certain limitations.

Witnesses who are competent to give evidence in criminal cases are also compellable to give evidence subject to the same grounds of privilege as in civil proceedings (c), and subject to this further

Defendant  
and wife or  
husband of  
defendant  
Compellable  
witness

(33 & 34 Vict. c. 23), s. 1, and *R v Fitzgerald* (1884), cited in Taylor on Evidence, 10th ed., Vol. II, p. 959.

(a) The common law, it has been said, knows no distinction between competent and compellable witnesses (Taylor on Evidence, 10th ed., Vol. I, p. 617, n. 6), but it seems that the King, foreign sovereigns and foreign ambassadors, who are not compellable to give evidence, are competent witnesses: see Taylor on Evidence, 10th ed., Vol. II, p. 989.

(b) Persons who are privileged from making disclosures are—husbands and wives, who are privileged from disclosing communications made to one another during marriage, lawyers and clients, who are privileged from disclosing confidential communications made for the purpose of obtaining legal advice (except communications made for the purpose of committing a crime or communications which are part of a criminal or unlawful proceeding), public officers, who are privileged from disclosing facts or documents the disclosure of which they declare to be injurious in the public interest. A witness may also refuse to answer a question the answer to which may tend to criminate him by exposing him to a criminal charge, or to a penalty or forfeiture. It seems that a minister of religion is not privileged from giving evidence of confessions made to him under the seal of secrecy (see title EVIDENCE). The judge who tries a case cannot be called as witness in the case, and, it seems, may object to give evidence in another case as to matters with which he became acquainted while he was acting as judge (Taylor on Evidence, 10th ed., Vol. I, 665, Vol. II, 987). As to advocates giving evidence of facts etc. which they have learned while acting as advocates but which were not confidentially communicated to them, see title BARRISTERS, Vol. III, p. 396.

(c) See p. 402, *post*.

(d) See p. 105, *post*.

(e) For privilege in criminal cases, see, as to husbands and wives, Criminal Evidence Act, 1895 (61 & 62 Vict. c. 36), s. 1 (d), as to lawyers and clients, *Du Barré v Livette* (1791), Peake, 108, *R v Cox and Hutton* (1884), 14 Q. B. D. 153, O. O. R., *R v Jones* (1816), 1 Den. 166, *R v Farley* (1846), 2 Car. & Kir. 313, *R v Hayward* (1846), 2 Car. & Kir. 234, *R v Brewer* (1834), 6 C. & P. 363, *R v Brown* (1862), 9 Cox, O. C. 281, *R v Tuffs* (1848), 1 Den. 319, *R v Avery* (1836), 8 O. & P. 396, *R v Watkinson* (1740), 2 Stra. 1122, *R v Downer* (1880), 11 Cox, O. C. 458, O. C. R. As to public officers, see *R v Ferquhar O'Connor* (1843), 4 State Tr. (N. S.) 935, at p. 1050. Police officers and public officials are privileged from disclosing the source of their information, and witnesses for the Crown in public prosecutions are privileged from disclosing the channel through which they have communicated information (*R v Watson* (1817), 32 State Tr. 1, at p. 100, *R v Smith O'Brien* (1848), 7 State Tr. (N. S.) 1, *R v Hardy* (1794), 21 State Tr. 199, at p. 753, *R v Richardson* (1863), 3 F. & F. 698, *Marks v Beyfus* (1890), 25 Q. B. D. 494, C. A.). As to incriminating questions, see *R v Slaney* (1872), 5 C. & P. 213, *R v Garbett* (1847), 1 Den. 236, *R v Coote* (1873), 11 R. 4 P. C. 599, *R v Adey* (1831), 1 Mood. & R. 94, *R v Sloggett* (1856), Deane, C. C. 676, *R v Boyes* (1861), 1 B. & S. 311, *R v Kinglake* (1870), 11 Cox, O. C. 409, *R v Readings* (1879), 7 State Tr. 239, 296. As to prisoner giving evidence on his own behalf, see p. 404, *post*. A communication made by way of confession to a minister of religion, is probably not privileged and the recipient may be compelled to disclose it, though in many instances the judges have shown a great disinclination to compel such disclosure.

SECT 3  
Com-  
petency of  
Witnesses  
in Criminal  
Proceed-  
ings

Evidence of  
defendant not  
admissible  
at common  
law

exception which is peculiar to criminal procedure, that the defendant and the wife or husband of the defendant are not compellable to give evidence except in certain cases (f) In criminal as in civil cases it is for the judge to decide on the competency of a witness (g)

Sub Sect 2—Evidence of Defendant

**771** The defendant in a criminal proceeding was not at common law (h) a competent witness either for the prosecution or for the defence on his trial. He could, however, make a statement not on oath, and he still can do this instead of giving evidence (i)

If a defendant is indicted jointly with other persons, he cannot at common law (h) give evidence on his trial against or for any of his co-defendants, if they are tried along with him, but, if two or more defendants, though indicted jointly, are tried separately, a defendant who is not being tried may give evidence against or for a co-defendant (l)

A defendant who, being indicted with others, has pleaded guilty may give evidence against or for his co-defendants, and even a defendant who has pleaded not guilty, if in the course of the trial he withdraws his plea and pleads guilty, or if he is acquitted, can give evidence against or for his co-defendants. If an indictment contains several counts and one of the defendants pleads guilty to one of the counts, and it is desired to call him as witness against another defendant, the proper course is to take a verdict of acquittal on the other counts before calling him.

A defendant in respect of whom a verdict of not guilty or a *nolle prosequi* has been entered may give evidence for or against a co-defendant (m)

see 2 Co Inst 629 *Du Barre v Lavette* (1791), Peake, 108, *Butler v Moore* (1802), McNally, Evidence, Vol 1, p 273, *Broad v Pitt* (1828), 3 C & P 518, *R v Gilham* (1828), 1 Mood C C 186, *R v Griffin* (1853), 6 Cox, C C 219, *R v Hay* (1860), 2 F & F 4

(f) See pp 403, 406, *post*

(g) *R v Whitehead* (1866), L R 1 C C R 33, and see *R v Wakefield* (1827), 2 Lew C C 279. Questions of this kind are often decided on the *voir dire*, before a witness is sworn, but if a witness who has been admitted as competent gives evidence, and is afterwards found to be incompetent, his evidence may be withdrawn from the jury (*R v Whitehead, supra*)

(h) As to the statutory modification of the common law rule, see p 403, *post*

(i) *R v Hull* (1880), Archbold, Criminal Pleading etc., 23rd ed., p 210, *R v Blades* (1880), *ibid.*, *R v Doherty* (1887), 16 Cox, C C 306, *R v Millhouse* (1888), 15 Cox, C C 622, *R v Shimmer* (1882), 15 Cox, C C 122, *R v Sheriff* (1905), 20 Cox, C C 334. The right was preserved by the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (h) (see *R v Pope* (1902), 18 T L R 717). There has been considerable difference of opinion among the judges as to the time when the statement should be made, some judges have ruled that the statement must be made before the speech of the prisoner's counsel (see *R v Blades, supra*, *R v Doherty, supra*, *R v Pope, supra*, *R v Sheriff, supra*), others have allowed it to be made afterwards (*R v Hull, supra*, *R v Millhouse, supra*, *R v Shimmer, supra*)

(k) As to the statutory modification of the common law rule, see p 403, *post*

(l) *R v Payne* (1872), L R 1 C C R 349, *R v Bradlaugh* (1883), 15 Cox C C 217, *Wansor v R* (1866), L R 1 Q B 390, Ex Ch

(m) *Wright v Paulin* (1824) Ry. & M 128, *R v Rouland* (1826), Ry &



**772** In a prosecution for the non-repair of a highway or bridge or for a nuisance to a highway, river, or bridge, and other prosecutions which are instituted for the purpose of trying or enforcing a civil right only, it is provided by statute (n) that the defendant shall be a competent and compellable witness for either the prosecution or the defence (o). In no other case is a defendant competent to give evidence for the prosecution on his trial (a).

**773** Every defendant is now by statute a competent witness for the defence at every stage of criminal proceedings either on his own behalf or on behalf of any person who is tried along with him, but he cannot be called as a witness except upon his own application (b);

**SECT. 2.**  
**Com-**  
**petency of**  
**Witnesses**  
**in Criminal**  
**Proceed-**  
**ings**

**Statutory**  
**exceptions**

When  
defendant is  
both a com-  
petent and  
compellable  
witness

When  
defendant is  
a competent  
but not a  
compellable  
witness

M 401, *R v O'Donnell* (1857) 7 Cox, C C 337, *R v Hinks* (1815), 1 Den 84, *R v Gallagher* (1875), 13 Cox, C C 61, C C R. As to *nolle prosequi*, see p 350, ante.

(n) Evidence Act, 1877 (40 & 41 Vict c 14)

(o) *I.e.*, the defendant is compellable to give evidence for the prosecution, competent to give evidence on his own behalf, and compellable to give evidence for the defence of other persons who are indicted along with him.

(a) The Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 12, as amended by the Children Act, 1908 (8 Edw 7, c 67) (see schedule) provides that a person accused of any offence under the first named Act is to be competent, but not compellable, to give evidence. This means, it seems, to give evidence for the defence only, the section as it stands might seem to sanction the giving of evidence by the accused in such cases for the prosecution, but, in the absence of express words giving such sanction or of a provision making the defendant a compellable as well as a competent witness, the section, so far as it relates to the person charged, would probably be held to refer to the defence only. If this put of the section only refers to evidence for the defence, it seems unnecessary, as the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), which permits a defendant in a criminal prosecution to give evidence, applies to all criminal proceedings (see *Charnock v Merchant*, [1900] 1 Q B 474). The language of the Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 12 is mainly taken from the repealed Prevention of Cruelty to Children Act, 1891 (54 & 55 Vict c 41) s 12, which, being passed before the Criminal Evidence Act 1898 (61 & 62 Vict c 36), was then needed, as without it the accused could not give evidence. No such provision was needed after the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), and it is not clear whether its insertion in the Act of 1904 (4 Edw 7, c 15), has any effect as regards the evidence of the person charged. It seems to have been inserted *per incuriam*.

(b) Criminal Evidence Act 1898 (61 & 62 Vict c 36), s 1. The Act came into force on 12th October, 1898 (s 7(2)), and applies to all criminal proceedings notwithstanding any enactment in force at the commencement of the Act, but does not affect the provisions of the Evidence Act, 1877 (40 & 41 Vict c 14) (see *supra*). At the time of the passing of the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), there were a number of statutes in force which made a defendant, or the wife or husband of a defendant competent to give evidence; it seems that all those Acts are superseded by the Criminal Evidence Act, 1898 (61 & 62 Vict c 36) and are now unnecessary, so far as they relate to the subject-matter of that Act (see *Charnock v Merchant*, [1900] 1 Q B 474, Stephen, Digest of the Law of Evidence, 6th ed., p 124, Taylor on Evidence, 10th ed Vol II, p 977, *R v Ellis* (1899), 34 Ll J 616, *R v Dunning* (1899), 34 Ll J 33, *R v Brazil* (1899), 63 J P 148). The Criminal Evidence Act, 1898 (61 & 62 Vict c 36), subject to the provisions of the Evidence Act, 1877 (40 & 41 Vict c 14), is the governing Act as regards the evidence of defendants and wives or husbands of defendants (see Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 6(1)), and even subsequent Acts containing provisions relating to the same subject-matter must unless they contain words expressly varying the Criminal Evidence Act 1898 (61 & 62 Vict c 36), be construed subject to

**SECT. 3**  
**Com-**  
**petency of**  
**Witnesses**  
**in Criminal**  
**Proceed-**  
**ings.**

Statutory  
 rules as to  
 evidence of  
 defendant

Cross exami-  
 nation as to  
 character etc

he cannot, therefore, be compelled against his will to give evidence for a co-defendant

**774** The defendant gives his evidence like other witnesses on oath or affirmation, and, unless otherwise ordered by the court, from the witness-box or other place from which the other witnesses give their evidence (*c*). He is not, however, treated altogether as an ordinary witness or as a person who might naturally be expected to be called as a witness (*d*).

If a defendant has given evidence in his own behalf which is not adverse to a co-defendant, and a co-defendant examines him in his own defence, the defendant who gives evidence becomes a witness for the co-defendant who examines him (*e*).

If a defendant gives evidence on his own behalf, it is no objection to a question put to him in cross-examination that it may tend to criminate him as to the offence charged (*f*), but he must not be asked, and if asked cannot be required to answer, any question tending to show that he has committed or been convicted of or charged with any offence other than that with which he is then charged or that he is of bad character, (1) unless the proof that he has committed or been convicted of such other offence is admissible to show that he is guilty of the offence with which he is then charged (*g*), or (2) unless he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or (3) unless the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution (*h*), or (4) unless

that Act. See as to the Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), and the Children Act, 1908 (8 Edw 7, c 67), p 403, *ante*. The Criminal Evidence Act, 1898 (61 & 62 Vict c 36), does not apply to courts-martial, unless so applied by general orders or rules, *see sub*, s 6. A defendant cannot give evidence before the grand jury (*R v Rhodes*, [1899] 1 Q B 77, O O R., *R v. Saunders* (1898), 63 J P 24). If a defendant pleads guilty, he cannot afterwards give evidence on his own behalf with a view to mitigation of punishment (*R v Hodgkinson* (1900), 64 J P 808). A prisoner ought to be distinctly told that he has a right to give evidence on his own behalf (*R v Warren* (1909), 25 T L R 633, O O A).

(1) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (g)

(2) *See* p 368, *ante*

(e) *See R v Burdett* (1855), 6 Cox, O C 438, C C R., at p 460, *R v Hadwen*, [1902] 1 K B 882, O C R., at p 886

(f) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (e)

(g) *See* p 380, *ante*

(h) *E.g.*, such an imputation is involved if the defendant states on oath that one of the witnesses for the prosecution committed the offence with which he is charged (*R v Marshall* (1899), 63 J P 36), or suggests that the prosecutrix is a "drunken wastrel" (*R v Holmes*, *Times*, 31st January, 1899 p 11), or that the prosecutrix on a charge of attempted rape consented to the acts which form the basis of the charge (*R v Fisher*, *Times*, 31st January, 1899, p 11, which was, however, dissented from in *R v Sheehan* (1908), 72 J P 232, which *see*). Such an imputation is not involved, if the defendant merely states that the evidence given by the prosecutor is a lie and that the prosecutor is a liar (*R v Rouse*, [1904] 1 K B 184, O C R.) or if the defendant suggests that he was employed as an informer by a detective who was a witness for the prosecution (*R v*

he has given evidence against any other person charged with the same offence (i).

**SUB SECT 3—Evidence of Wife or Husband of Defendant**

**775.** At common law (k) the wife or husband of a defendant cannot give evidence for the prosecution or for the defence on the trial of the defendant, except in cases of offences committed by the defendant against the person or liberty of the other party to the marriage, and in such cases the wife or husband of the defendant can be compelled to give evidence for the prosecution without the consent of the other party to the marriage (l).

According to the weight of authority, this exception does not apply to cases of treason (m).

**SECT. 3.**  
**Com-**  
**petency of**  
**Witnesses**  
**in Criminal**  
**Proceed-**  
**ings.**

Wife or  
husband of  
defendant.

When a  
competent  
witness at  
common law

*Bridgwater*, [1905] 1 K B 131, C C R.) See *R v Preston* [1909], 1 K B 568, C C A, where a prisoner in giving evidence made an allegation against a witness for the prosecution, but the making of such an imputation was not the substance of the defence or part of the nature or conduct of the defence, and it was held that the making of such an imputation did not let in evidence as to the prisoner's bad character.

(i) If such questions are asked in circumstances that do not come within the specified exceptions, and the defendant is convicted, the conviction is bad and will be set aside (*Charnoch v Merchant*, [1900] 1 Q B 414, *R v Rouse*, [1901] 1 K B 184, C C R., *R v Bridgwater*, *supra*).

(k) As to the statutory modifications of the common law rule see p 406, *post*.

(l) 2 Hawk P C, 8th ed., c 46, ss 67–79, 1 Hale, P C 301, *R v Azur* (1728), 1 Stra 633 (assault), *R v Pearce* (1810), 9 O & P at p 608 (shooting with intent to murder), *R v Jellyman* (1838), 8 O & P 604 (committing an unnatural offence), *Lord Audley's Case* (1631), 3 State Tr 401 (rape by aiding another person to ravish the defendant's wife), where a woman has been abducted and forced to marry the abductor, the woman can give evidence against the abductor when charged with abduction, the reason being that the marriage is null (*R v Wakefield* (1827) 2 Lew C C 279), *aliter*, if the woman has after being abducted consented to the marriage voluntarily, or if a forced marriage has been ratified by voluntary cohabitation (1 Hale, P C 302, 661). It seems that if a marriage is brought about by fraudulent misrepresentations, and the husband or wife is on his or her trial for a charge based on those representations, the wife or husband cannot give evidence against the defendant (*R v Sergeant* (1826), Ry & M 352), but see *R v Perry* (1791), 2 Hawk P C 601. *Quare*, whether the proper rule is that such evidence could be given, if the representations are of such a nature as to make the marriage void (see *Moss v Moss*, [1897] P 263).

(m) In a prosecution for bigamy the true wife or husband of the defendant cannot be called as a witness (1 Hale, P C 693, *R v Griggs* (1660), T Raym 1, *R v Peat* (1838), 2 Lew C C 258), but the false wife or husband can give evidence (1 Hale, P C 693, and see *R v Young* (1847), 2 Cox, C C 291). Nothing in the Criminal Evidence Act, 1898 (61 & 62 Vict. c 36), affects the case where the wife or husband of a person charged with an offence can be called at common law as a witness without the consent of the person charged (s 4 (2)). The dying declarations of a wife or husband are admissible as evidence against the husband or wife when charged with the murder or manslaughter of the person who made the declaration (*R v Woodcock* (1769), 1 Leach, 500, *R v Johns* (1790), 1 Leach, 504, n).

(n) *Anon* (1613), 1 Brownl 47, 1 Hale, P C 301. But in 2 Hawk P C, c 46, s 79, and *Bac Abr tit Evidence*, A, p 205, the point is treated as unsettled. See 1 Chitty, Criminal Law, 695, Taylor on Evidence 10th ed., Vol II, 976, but see *R v Griggs* (1661), T Raym 1; Buller, Nisi Prius, 288, Gilbert on Evidence, 6th ed., 119. There is no instance traceable of the wife having given evidence against the husband on a charge of treason (*McNally*, Evidence, Vol I, 181).

**SECT 3**  
**Com**  
**petency of**  
**Witnesses**  
**in Criminal**  
**Proceed**  
**ings**

In all cases where a wife or a husband is a competent witness for the prosecution against the other party to the marriage, the wife or husband is a competent witness for the defence (*n*)

If more persons than one are indicted and tried together, no wife or husband of any defendant can at common law (*o*) give evidence either for or against any defendant, except in the cases just mentioned and in cases in which the defendant who is the husband or wife of the witness tendered can give evidence (*p*)

When wife  
or husband  
of defendant  
may give  
evidence for  
prosecution

**776** The wife or husband of a defendant is a competent and compellable witness either for the prosecution or for the defence on the trial of indictments relating to the non-repair of highways etc (*q*)

The wife or husband of a person charged with certain offences (*r*) may be called as a witness either for the prosecution or for the defence and without the consent of the person charged (*a*)

The effect of this enactment does not seem to be to make the wife or husband of the party charged with the specified offences a compellable witness either for the prosecution or for the defence (*b*)

(*n*) *R v Sergeant* (1826), Ry & M, per ABBOTT, C J, at p 314

(*o*) For the statutory modifications of the common law rule see *infra*

(*p*) See p 302, *ante*, *R v Lover* (1801), 1 Esp 107, *R v Williams* (1838), 8 C & P 254, *R v Thompson* (1863), 3 F & F 821. In *R v Pamerter* (1872), 12 Cox, C C 177, KIRLEY, C B, refused to admit as evidence against a defendant a letter written by him to his wife while he was in custody and detained by a constable to whom the defendant had given it to post. The ground of the rejection of this letter was that it belonged to the wife, and that she could not have been called upon to produce it, if it had reached her hands. This ruling would be inapplicable now in those cases where the wife or husband of a defendant is a compellable witness (see *infra*) but would be applicable to all cases where the wife or husband is not compellable

(*q*) Evidence Act, 1877 (40 & 41 Vict c 14)

(*r*) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1

(*a*) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 4 (1) and schedule, Children Act, 1908 (8 Edw 7, c 67), s 27 and first schedule. The offences are the offences under the Vagrancy Act, 1824 (5 Geo 4, c 84), of a man neglecting to maintain or deserting his wife or any of his family, any offence under the Married Women's Property Act 1882 (45 & 46 Vict c 75), ss 12, 16, under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), under the Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 27 (exposing children), s 18 (rape), ss 33, 34, 35 (abduction of women and girls), or s 38 (child stealing), any offence against a person under sixteen under the Offences against the Person Act 1861 (24 & 25 Vict c 100), s 5 (manslaughter), s 42 (common assault), s 43 (aggravated assault), s 52 (indecent assault etc), or s 62 (attempt to commit an infamous crime) any offence under the Dangerous Performances Acts, 1879 and 1887 (42 & 43 Vict c 34, 60 & 61 Vict c 52), and any other offence involving bodily injury to a person under sixteen (see Children Act, 1908 (8 Edw 7, c 67), Sched I, and s 27), any offence under the Children Act, 1908 (8 Edw 7, c 67) Part II (see p 408, *post*)

(*b*) In *R v Little* (1899) 31 L J 646, and *R v Dunning* (1899) 34 L J 33 (charges under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69)), the wife was treated as a compellable witness, in *R v Brazil* (1899), 63 J P 138 (a charge under the same Act), the wife objected to give evidence against her husband, and her objection was allowed. It is immaterial whether the marriage has taken place before or after the offence charged (*R v Brazil*, *supra*)

**777** In any proceeding against any person under the Prevention of Cruelty to Children Act, 1904 (c), the wife or husband of the person accused may be required to attend as an ordinary witness in the case, and is competent, but not compellable, to give evidence—i.e., it seems either for the prosecution or for the defence (d).

**778** It is further provided by statute (e) that in all criminal proceedings (f) the wife or husband of every person charged with an offence is a competent witness for the defence at every stage of the proceedings, but cannot, except in certain specified cases (g), be called as a witness, except upon the application of the person charged who is the husband or wife of the proposed witness (h).

The provisions of the statute do not render a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose a communication so made to her by her husband (i).

A husband or wife who gives evidence under the provisions of the statute may be cross-examined as to his or her previous offences or as to his or her character (k).

The failure of the wife or husband of the person charged to give evidence must not, any more than the failure of the person charged to give evidence, be made the subject of any comment by the prosecution (l).

**SECT. 3.**  
**Com-**  
**petency of**  
**Witnesses**  
**in Criminal**  
**Proceed-**  
**ings**

Wife or  
husband of  
defendant as  
witness for  
defence

Statutory  
rules as to  
evidence of  
wife or  
husband of  
defendant.

(c) 4 Edw 7, c 10, s 12, and see Children Act, 1908 (8 Edw 7, c 67), and Third Schedule.

(d) The words "may be required to attend to give evidence as an ordinary witness in the case" seem to contemplate the wife or husband giving evidence for the prosecution. The effect seems to be to alter, in respect of the offences in question, s 1 (c) of the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), and to make it possible to call the wife or husband of the defendant without the application of the defendant, but the other words of the section give the witness the option of refusing to give evidence. It seems that s 12 of the Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), cannot justify the binding over of the wife or husband by recognisance to give evidence, as that is a species of compulsion. *Quære*, whether the words quoted above refer to the process by *subpoena*. The Act seems to provide for the wife or husband giving evidence for the defence, but this would appear to have been unnecessary, as it was already provided for by the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (see *infra*).

(e) Criminal Evidence Act, 1898 (61 & 62 Vict c 36).

(f) Nothing in the Criminal Evidence Act, 1898 (61 & 62 Vict c 36), is to affect the Evidence Act, 1877 (40 & 41 Vict c 14), see p 406, *ante*.

(g) Criminal Evidence Act, 1898 (61 & 62 Vict c 36) s 4 (1), and Criminal Evidence Act, 1877 (40 & 41 Vict c 14) (see p 406, *ante*).

(h) *Ibid*, s 1. The effect of the exception is that a co-defendant cannot call the wife or husband of another co-defendant as a witness, unless the husband or wife who is a co-defendant applies that his or her wife or husband should be called. The object of the exception is to prevent a wife or husband giving, without the husband or wife's consent, evidence which may have the effect of inculcating the husband or wife. It seems that, if the wife or husband of a co-defendant is called as a witness and gives evidence adverse to another co-defendant, such co-defendant has the right to cross-examine the person so called (*R v Hadwen*, [1902] 1 K B 882, C C R.).

(i) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1 (d).

(k) The provisions of the Act which prohibit, with certain reservations, cross-examination as to previous offences, or as to character apply only to the person charged (*ibid*, s 1 (e), (f)).

(l) *Ibid*, s 1 (b).

## SECT. 3.

Competency of  
Witnesses  
in Criminal  
Proceedings.Evidence not  
on oathSUB-SECT. 4—*Evidence of Children*

**779** In criminal proceedings there is a limited class of cases in which a witness can give evidence not on oath or affirmation

In a charge for certain offences under the Children Act, 1908 (*m*), if the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court or justices understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if in the opinion of the court or justices such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but no person can be convicted on such unsworn evidence, unless it is corroborated by some other material evidence in support thereof implicating the accused (*n*)

There are similar provisions as to the taking of unsworn evidence when a person is charged with an offence under the Prevention of Cruelty to Children Act, 1904 (*o*)

SUB-SECT. 5—*Evidence of Accomplices*

**780** There is no absolute rule of law that the evidence of an accomplice must be corroborated, but there is a well established rule of practice by which judges advise juries not to convict a prisoner, except in very special circumstances, on such evidence, when uncorroborated (*p*)

(*m*) 8 Edw. 7, c 67. The offences are those under Part II of the Act and those mentioned in the First Schedule of the Act. For the offences under Part II of the Act, see s 12 (cruelty to children and young persons), s 16 (allowing children or young persons to reside in or to frequent a brothel), and s 17 (encouraging the seduction or prostitution of a young girl). The offences mentioned in the First Schedule of the Act are—(1) any offence under the Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 27 (exposing children), s 55 (abduction of girls), and s 56 (child stealing), (2) any offence against a person under sixteen under the following sections of that Act s 5 (manslaughter), s 42 (common assault), s 43 (aggravated assault), s 52 (indecent assault), or s 62 (attempt to commit an infamous crime), (3) any offence under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), (4) any offence under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict c 34, 60 & 61 Vict c 52), or (5) any other offence involving bodily injury to a person under sixteen

(*n*) Children Act, 1908 (8 Edw 7, c 67), s. 30 (repealing part of s 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), see *R v Wealand* (1886), 20 Q B D 827, C C R, *R v Owen* (1888), 20 Q B D 829, C C R, and *R v Paul* (1890), 25 Q B D 202, C C R, decided under the repealed part of s 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69). If unsworn evidence is given before justices under the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c 15), or the Children Act, 1908 (8 Edw 7, c 67), and the deposition is taken down in writing, and if the witness at the time of the trial is dead or too ill to travel, the deposition can be given in evidence under the Indictable Offences Act, 1848 (11 & 12 Vict c 42), s 17 (see Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 15, Children Act, 1908 (8 Edw. 7, c 67), s 30. The decision in *R v Prunty* (1888), 16 Cox, C C 344, which was decided under the repealed part of s 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c 69), is no longer applicable.

(*o*) 4 Edw. 7, c 15 (see s 15, and Children Act, 1908 (8 Edw 7, c 67), Third Schedule).

(*p*) *R v Tate* (1908), 1 Cr App Rep 39. A verdict obtained on the uncor-

## Part VII.—Punishment and Prevention of Crime.

### SECT 1.—*Punishment in General (a).*

#### SUB-SECT 1 —*Kinds of Punishment*

#### SECT 1 Punish- ment in General.

**781.** Judgment of death can only be awarded for murder (*b*), treason (*c*), piracy (*d*), or setting fire to the King's ships or arsenals etc (*e*). It cannot be pronounced on, or recorded against, anyone under the age of sixteen (*f*).

Death

When a person above sixteen is convicted of murder or treason, judgment of death must be pronounced, but in cases of piracy and setting fire to the King's ships it may be merely recorded (*g*).

In the cases of crimes other than the four last mentioned the court has a discretion within certain limits in fixing the punishment (*h*).

**782** Penal servitude is a form of punishment (*i*) which can only be imposed when a statute authorises its imposition (*k*). The shortest sentence of penal servitude that can be passed is for three years. A person convicted of any felony for which no

Penal  
servitude

robored evidence of an accomplice alone is liable to be upset by the Court of Criminal Appeal, see *R v Barrett* (1908), 1 Cr App Rep 64, *R v Jacobs* (1908), 1 Cr App Rep 216, *R v Warner* (1908), 1 Cr App Rep 227, *R v Stubbs* (1855), 25 L J (M C) 16, *R v Boyes* (1861), 1 B & S 311, *R v Thistlewood* (1820), 33 State Tr 921. See also p 388, *ante*, and cases cited in note (a) *thereon*.

(a) In addition to the punishments mentioned many statutes (24 Hen 8, c 12, s 2, 25 Hen 8, c 19, 25 Hen 8, c 20, s 6, 21 Jac 1, c 3, s 4, 12 Car 2, c 24, s 12, 13 Car 2, stat 1, c 1, s 3, H was Corpus Act, 1679 (31 Car 2, c 2), s 11, Succession to the Crown Act, 1707 (6 Ann c 41), s 2, Scottish Representative Peers Act, 1707 (6 Ann c 78), s 4, Royal Marriages Act, 1772 (12 Geo 3, c 11), s 9) prescribe for certain offences the penalties imposed by the (1393) statute of *præmunire* (16 Ric 2, c 5), i.e., imprisonment for life and confiscation of property, but these penalties, although referred to in the Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1, are now obsolete, see note to *R v Crook* (1862), 6 State Tr 201, 210.

(b) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s. 2.

(c) Treason Act, 1814 (54 Geo 3, c 146), s 1.

(d) Piracy Act, 1837 (7 Will 4 & 1 Vict c 88).

(e) Dockyards etc. Protection Act, 1772 (12 Geo 3, c 24), s 1.

(f) Children Act, 1908 (8 Edw 7, c 67), ss 103, 131.

(g) Judgment of Death Act, 1823 (4 Geo 4, c 48), see Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 2, and Treason Act, 1814 (54 Geo 3, c 146), s 1.

(h) For the punishments fixed for each offence, see *post*, under the heading of each offence. As to the matters to be considered in sentencing a prisoner, see *R v Syres* (1908), 73 J P 13, and *R v Kirkpatrick* (1908), 73 J P 29, O C A., and p 425, *post*.

(i) It was substituted for transportation by the Penal Servitude Act, 1853 (16 & 17 Vict c 99) ss 5, 6, 7, see Penal Servitude Act, 1857 (20 & 21 Vict c 3), ss 2, 3, Penal Servitude Act, 1864 (27 & 28 Vict c 47), and Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The Acts applicable to transportation are extended so as to be applicable to penal servitude (Penal Servitude Act, 1853 (16 & 17 Vict c 99), s 7, and see s 14).

(k) Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1.

**SECT 1**  
**Punish**  
**ment in**  
**General**

punishment is specially provided is liable to a sentence of penal servitude for not more than seven or less than three years, or to a sentence of imprisonment for not more than two years (*l*)

As regards all sentences of penal servitude authorised by any Act before 5th August, 1891, the court may award a sentence of penal servitude for any period not less than three years and not exceeding five years, or any longer period fixed by the particular Act. An alternative sentence of imprisonment for a term not exceeding two years may be passed instead of penal servitude, when penal servitude is authorised by any Act, unless there is provision to the contrary in any Act passed after 5th August, 1891 (*m*)

**Imprisonment**  
**without hard**  
**labour**

**783** Imprisonment without hard labour (with or without a fine) is the common law punishment for a common law misdemeanour, and is a statutory punishment for some kinds of felony or misdemeanour

Where imprisonment is a punishment allowable by common law, there is no limit fixed for the period of imprisonment (*n*)

In most cases where imprisonment without hard labour is allowable by statute the maximum period of imprisonment is for two years (*a*)

Persons who are sentenced to imprisonment without hard labour may be divided into three divisions. The court that passes the sentence may, if it thinks fit, having regard to the nature of the offence and the antecedents of the offender, direct that he be treated as an offender of the first division or as an offender of the second division, if no direction is given by the court, he is to be treated as an offender of the third division (*b*)

**With hard**  
**labour**

**784** Imprisonment with hard labour is a punishment which can only be imposed when authorised by statute (*c*). The maximum period is generally two years (*d*)

(*l*) Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Penal Servitude Act, 1857 (20 & 21 Vict c 3), s 2

(*m*) Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*n*) *R v Castro* (1880), 5 Q B D 490, C A, per BRAMWELL, L J, at p 509. Imprisonment without hard labour with or without a fine was substituted for the pillory by the Pillory Abolition Act, 1816 (36 Geo 3, c 138), s 2, no limit of the term of imprisonment is fixed by that statute

(*a*) See Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1. A sentence of three years' imprisonment without hard labour may, it seems still be passed *erga* for a second conviction for blasphemy (stat (1697-8) 9 Will 3, c 35), a sentence of three years' imprisonment with or without hard labour may also be passed for threatening to publish a libel with intent to extort money (Libel Act, 1813 (6 & 7 Vict c 90), s 3). If a statute authorises imprisonment, but does not specify any term there is no limit to the period

(*b*) Prison Act 1898 (61 & 62 Vict c 41), s 6 (1) (2). See *R v Harris* (1909), 2 Cr App Rep 50. A prisoner sentenced to imprisonment for sedition or seditious libel is always to be treated as an offender of the first division (Prison Act, 1877 (40 & 41 Vict c 21), s 40, Prison Act, 1898 (61 & 62 Vict c 41), s 6 (5)). As to the treatment of persons in the three divisions, see Local Prison Rules, 1899, Parts III, IV, V (Statutory Rules and Orders Revised, Vol X, Prisons, England pp 60 *et seq*, No 322), and title PRISONS

(*c*) See Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1, Hard Labour Act, 1822 (3 Geo 4, c 114); Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 29

(*d*) Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. But imprisonment



**785** A person sentenced on several charges, whether on separate indictments or on different counts in one indictment, may be sentenced to more terms than one of penal servitude or imprisonment, and these terms may either run concurrently with one another or may be consecutive, so that one commences on the expiration of another (e)

SECT 1  
Punish-  
ment in  
General

Sentences on  
several  
charges

Punishment  
after previous  
conviction

**786** In certain cases where an offence has been committed after a previous conviction, the judge may, in his discretion, in addition to any other punishment which is inflicted on the offender, make an order that he should be kept under police supervision for any period not exceeding seven years (f)

**787** Whipping is a common law punishment for a misdemeanour, but is rarely now inflicted as a punishment except under statutory authority. It has been abolished as a punishment for females (g)

Whipping.

The whipping of adult males in addition to or instead of any other punishment is authorised by statute—(1) in the case of incorrigible rogues sentenced at quarter sessions (h), (2) in the case of persons who are convicted of discharging firearms or explosive substances at the Sovereign (i), (3) in the case of persons convicted of the offence of robbery with violence, or of the offence of robbery or assault with intent to rob whilst armed with an offensive weapon or instrument (k), (4) in the case of persons convicted of the offence of attempting to choke, suffocate, or strangle anyone, or of using means calculated to do so with intent to commit or to enable any other person to commit an indictable offence (l)

with hard labour for three years is, it seems, possible under the Label Act, 1843 (6 & 7 Vict c 96), s 3. See, too, pp 506, note (h), 523, *post*

(e) *R v Wilkes* (1770), 19 State Tr 1075, 1132, *Castro* *R* (1881), 6 App Cas 229. A sentence of hard labour concurrent with a sentence of penal servitude is undesirable, as the sentence of hard labour makes it more difficult for the prisoner to earn a remission of his sentence of penal servitude (*R v Martin* (1908), 1 Cr App Rep 209). But if a person who has been sentenced to penal servitude is released on ticket-of-leave and is afterwards convicted of another crime, he must serve the rest of his original sentence after the expiration of the second and the remnant of the original sentence cannot be made to run concurrently with the new one (*R v King*, [1897] 1 Q B 211 C C R, *per* HAWKINS, J, at p 218, *R v Hamilton* (1908), 1 Cr App Rep 87). It has been said that as a general rule it is not desirable that a sentence of penal servitude should follow on one of imprisonment with hard labour (*R v Jones* (1908), 1 Cr App Rep 196).

(f) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 8, Prevention of Crime Act, 1879 (42 & 43 Vict c 55), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 4, and see p 414, *post*

(g) See Whipping Act, 1820 (1 Geo 4, c 57)

(h) Vagrancy Act, 1824 (5 Geo 4, c 83), s 10

(i) Treason Act, 1842 (5 & 6 Vict c 51), s 2

(k) See Larceny Act 1861 (24 & 25 Vict c 96), s 43

(l) See Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 21, and Garrotters Act, 1863 (26 & 27 Vict c 44), s 1. In *R v Smallbone* (1898), 33 L J 124, a person convicted of attempting to choke a woman with intent to commit a rape on her was sentenced at the Hampshire Assizes to two whippings and seven years' penal servitude. As regards whipping under the Garrotters Act, 1863 (26 & 27 Vict c 44), in the case of an offender under sixteen the number of strokes is not to exceed twenty-five at each whipping, and the instrument used

**SECT 1**  
**Punish**  
**ment in**  
**General.**

**Fine**

**788.** A fine, either with or without imprisonment, is a punishment for a common law misdemeanour. It is also a statutory punishment, which may in certain cases (*m*) be inflicted with or instead of imprisonment. A fine is rarely imposed except under a statute.

**Order for**  
**abatement**  
**of nuisance**

**789** If a defendant has been convicted on indictment for causing a nuisance, an order may be made by the court for the abatement of the nuisance, if it is alleged to be a continuing nuisance and is proved to be still continuing at the date of the judgment (*n*).

**SUB-SECT 2—Recognisances to keep the Peace**

**Recogn**  
**isances**

**790** A person who has been convicted of any felony (except murder) under the Criminal Law Consolidation Acts (*o*) may be ordered, in addition to any other punishment, to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than a year (*p*).

A person who has been convicted of any indictable misdemeanour under the Criminal Law Consolidation Acts (*o*) may, in addition to or in substitution for any other punishment, be ordered to enter into his own recognisances and to find sureties for keeping the peace and being of good behaviour, and on failure to find sureties may be imprisoned for not more than a year (*p*).

A person convicted of any other indictable misdemeanour, whether at common law or by statute, may be ordered, in addition to or substitution for any other punishment, to enter into a recognisance, with or without sureties, to keep the peace and be of good behaviour.

is to be a buck-rod, in the case of any other male offender the number of strokes is not to exceed fifty at each such whipping. In each case the court is to specify the number of strokes to be inflicted and the instrument to be used (*ibid*). Whipping is also authorised in certain cases tried before courts of summary jurisdiction, see title **MAGISTRATES**. As to the whipping of offenders under sixteen, see p 423, *post*.

(*m*) See the Criminal Law Consolidation Acts (*o*), Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 38, Forgery Act, 1861 (24 & 25 Vict c 98), s 51, Larceny Act, 1861 (24 & 25 Vict c 96), s 117, Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 73, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 71, Gaming Act, 1845 (8 & 9 Vict c 109), s 4, Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2, Children Act, 1908 (8 Edw 7, c 67), s 12. There was no limit to the amount of a fine at common law except the provisions of Magna Carta (25 Edw 1, s 14) and the Bill of Rights (1 Will & Mar sess 2, c 2) against unreasonable fines. Some of the statutes which authorise the imposition of a fine fix a maximum limit, *e.g.*, the Gaming Act, 1845 (8 & 9 Vict c 109), the Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2, and the Children Act, 1908 (8 Edw 7, c 67), ss 9 and 12. Other statutes (*e.g.*, the Criminal Law Consolidation Acts, see *ante*) which authorise the imposition of a fine fix no limit.

(*n*) *R. v West Riding of Yorkshire Justices* (1798), 7 Term Rep 467, *R v Stead* (1799), 8 Term Rep 142, *R v Inledon* (1810), 13 East, 164.

(*o*) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 38, Forgery Act, 1861 (24 & 25 Vict c 98), s 51, Larceny Act, 1861 (24 & 25 Vict c 96), s 117, Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 73, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 71.

(*p*) *Ibid*

for a reasonable time to be specified in the order, and to be imprisoned until the recognisances are entered into (q)

If the conditions of such recognisances are broken, the recognisances may be estreated (r).

In the case of any offence except one punishable by death the court may, instead of passing sentence, require a person who has been convicted to enter into recognisances, with or without sureties, to come up for judgment when called upon. Such recognisances may also contain a condition that the convicted person should in the meantime keep the peace and be of good behaviour (s).

SECT. 1.  
Punish-  
ment in  
General

**791** When any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour, and to appear for sentence when called on at any time during such period not exceeding three years, as may be specified in the order (a). The court may also order the offender to pay such damages for injury or compensation for loss and to pay such costs of the proceedings as the court thinks reasonable (b).

Probation of  
Offenders  
Act, 1907.

Order for  
conditional  
discharge of  
person  
convicted.

Where an offender is ordered by the court to enter into such recognisances, they may contain a condition that the offender is to be under the supervision of a person named in the order for a period therein specified and such other conditions for securing such supervision as may be specified in the order. Conditions.

There may also be inserted in such a recognisance additional conditions (1) prohibiting the offender from associating with thieves and other undesirable persons and from frequenting undesirable places, or (2), where the offence was committed under the influence of drink, requiring the offender to abstain from intoxicating liquor (c), and (3) generally for securing that the offender should lead an honest and industrious life (d).

(q) *R v Dunn* (1847), 12 Q. B. 1026, 1041, n.

(r) Crown Office Rules, 1906, r. 115, see Fines Act, 1833 (3 & 4 Will. 4, c. 99), ss. 26, 27, 28.

(s) This course may be pursued if a case is stated under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78) (see s. 1), or in the case of an appeal under the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), or in any other case where the court may think it expedient (*Burgess v. Bortolfeur* (1844), 7 Man. & G. 181, *R v Miles* (1890), 24 Q. B. D. 423, O. C. R., Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (2)). As to deportation of alien criminals, see p. 418, *post*.

(a) Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (2).

(b) *Ibid.*, s. 1 (3).

(c) See *R v Davies*, [1909] 1 K. B. 592, O. C. A.

(d) Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 2. As to the

## SECT 1

## Punishment in General

Security of the peace

**792** If a person has just cause to fear that another will do him some bodily harm, as by killing or beating him or his wife or child, he may demand the surety of the peace against such person, and it is the duty of a justice of the peace to bind over such person, if the applicant proves on oath that he is actually under such fear and has just cause to be so (e)

Binding a person over to keep the peace is not in strictness a punishment, but is a measure taken to prevent the apprehended danger of a breach of the peace

Proceedings for this purpose are generally taken before justices, but an application may also be made by exhibiting articles of the peace in the King's Bench Division of the High Court of Justice (f)

Good behaviour

**793** A person may also be bound over by justices or by the High Court of Justice to be of good behaviour, and this may be done by the justices of their own motion or on the complaint of others. A recognisance to be of good behaviour is more comprehensive than a recognisance to keep the peace, and a person may be bound over to be of good behaviour, to prevent an apprehended offence, it is not necessary in such a case for the applicant to swear that he goes in fear of the person against whom the application is made (g)

Forfeiture of recognisance

**794** If anyone fails to satisfy the condition of a recognisance, it may be estreated (h). The effect of the estreat is that the sheriff enforces the forfeiture by levying the amount of the recognisance on the goods and chattels of the recognisor, and if sufficient goods and chattels cannot be found, by seizing his body (i)

The court may also discharge or enlarge a recognisance (u).

## SUB-SECT 3—Police Supervision

Notification of residence

**795** A person who has been sentenced to police supervision, and is at large in Great Britain or Ireland, must notify the place of his residence to the chief officer of police of the district in which his residence is situated, and whenever he removes to another residence within the same police district, must notify his change of residence to such chief officer, and if he is about to leave a police district, he must notify his intention to the chief officer of police of that district and must state the place to

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appointment and the duties of probation officers, see ss 3 and 4, and as to the punishment of the offender, if he fails to observe the conditions of his release, see s 6

(e) 1 Hawk P C, 8th ed, c 28, s 2, Burn's Justice, 30th ed, Vol V, 743, see also title MAGISTRATES

(f) Crown Office Rules, 1906, rr 246—256. A peer or peeress can only be bound over for this purpose in the High Court (Short and Mellor, Practice of the Crown Office, 2nd ed, 377)

(g) See Burn's Justice 30th ed, Vol V, 754, *R v Williams*, [1907] 2 K B 360, Stone's Justices' Manual, 40th ed, 1121, see also title MAGISTRATES

(h) Criminal Law Act 1826 (7 Geo 4, c 64), s 31

(i) See Levy of Fines Act, 1822 (3 Geo 4, c 46), s 2, Fines Act, 1833 (3 & 4 Will 4, c 99), ss 29—32

(u) *R v. Doyen* (1899), 54 L. J 645, *R v Sangiovanni* (1904), 68 J P 54

which he is going, and, if it is required and is practicable, his address at that place, and whenever he arrives in any police district, he must forthwith notify his place of residence to the chief officer of police of that district (*b*)

SECT 1  
Punish-  
ment in  
General

Every male person subject to such supervision is once in every month to report himself, at such time as may be prescribed by the chief officer of police of the district in which he may be, either to the chief officer himself or to such other person as the chief officer may direct. The report may be made personally or by letter (*b*)

Reports,

Any person subject to the supervision of the police who fails to comply with these provisions is guilty of an offence (*b*), and unless he proves either that being on a journey he failed no longer in the place where it was necessary to notify his place of residence than was reasonably necessary, or that he did his best to act in conformity with the law, he is liable, on conviction therefor by a court of summary jurisdiction, to a sentence of imprisonment, with or without hard labour, for not more than one year (*c*)

Failure to  
notify.

There are similar provisions with regard to a person sentenced to penal servitude who has been granted a licence to be at large (*d*)

Licence to be  
at large

## SECT 2 —*Punishment of Special Classes of Offenders*

### SUB-SECT 1 —*Habitual Criminals*

**796** A person convicted on an indictment charging him with one of certain specified crimes (*e*) and also with being a habitual criminal may be sentenced to preventive detention as an additional punishment (*f*)

Habitual  
criminal.

A habitual criminal for the purposes of the statute means a person who, after attaining the age of sixteen, has been proved to have been at least three times convicted of one of the specified crimes previously to the conviction for the crime charged in the indictment, and to be leading persistently a dishonest or criminal life, or a person who on such a previous conviction has been found to be a habitual criminal and sentenced to preventive detention (*g*)

(*b*) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112) s 8 Prevention of Crime Act, 1879 (42 & 43 Vict c 55), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 4

(*c*) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), ss 8, 17

(*d*) Prevention of Crimes Act, 1871 (34 & 35 Vict c 112), s 5, Prevention of Crime Act 1879 (42 & 43 Vict c 55), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 4

(*e*) *I.e.* any felony, uttering false or counterfeit coin, possession of counterfeit gold or silver coin, obtaining goods or money by false pretences, conspiracy to defraud, or any misdemeanour under the Larceny Act, 1861 (24 & 25 Vict c 96), s 58 (Prevention of Crime Act, 1908 (5 Edw 7, c 59), s 10 (6) and schedule). The crime must have been committed after the 21st December, 1908 (*ibid*), s 10)

(*f*) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 10 This Act came into operation on the 1st August, 1909

(*g*) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 10 (2) The crimes for

**SECT 2**  
**Punishment**  
**of Special**  
**Classes of**  
**Offenders.**

Sentence of  
 preventive  
 detention

**797.** If a person is convicted on an indictment charging him with one of the specified crimes and also charging him with being a habitual criminal, and the jury find that he is guilty of these charges and the court passes upon him a sentence of penal servitude but is of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years, the court may pass a further sentence that on the determination of the sentence of penal servitude he should be detained for such period, not exceeding ten nor less than five years, as the court may determine (*h*).

Power of  
 Secretary of  
 State

**798** If any person has been sentenced (*i*) to a term of penal servitude of not less than five years, the Secretary of State may, if such person appears to him to have been a habitual criminal, at any time after the expiration of three years of the term to which he has been sentenced commute the whole or part of the residue of the term to a sentence of preventive detention, but the total term of the sentence when so commuted must in that case not exceed the term of penal servitude originally awarded (*j*)

Effect of  
 sentence of  
 preventive  
 detention

When a sentence of preventive detention is added to a sentence of penal servitude, the sentence of preventive detention is to take effect immediately on the determination of the sentence of penal servitude, whether the sentence of penal servitude is determined by effluxion of time or at an earlier date by order of the Secretary of State (*k*)

The Secretary of State in making such order may have regard to

which the accused has been previously convicted may be either committed before or after the passing of the Act (21st December, 1908). The indictment is sufficient if after charging the crime it states that the offender is a habitual criminal (*ibid*, s 10 (2), (3)). A charge of being a habitual criminal cannot be inserted in an indictment without the consent of the Director of Public Prosecutions, and unless not less than seven days' notice has been given to the proper officer of the court by which the offender is to be tried and to the offender that it is intended to insert such charge, the notice to the offender must specify the previous convictions and the other grounds upon which it is intended to found the charge (*ibid*, s 10 (4)). The offender is to be arraigned on the indictment in the same way as a person who is arraigned on an indictment which contains a count for a previous conviction (see pp 353, 374, *ante*), *etc.* he is not to be arraigned on the part of the indictment charging him with being a habitual criminal until after he has pleaded guilty to the charge or the jury have found him guilty of the crime charged (*ibid*, s 10 (4)). Evidence as to character and repute may, if the court think fit, be admitted on the question whether the accused is or is not leading persistently a dishonest or criminal life, the accused may tender evidence as to his character and repute (*ibid*, s 10 (5)). The persistent leading of a dishonest or criminal life must be proved and is a more important part of the definition of a habitual criminal than the previous convictions (*R v Raybould* (1909), 2 Cr App Rep 141. *Quare*, whether a conviction on three indictments found by the same grand jury amounts to three convictions within the meaning of s. 10 (2) (*R v Raybould*, *supra*)).

(*h*) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 10. A person sentenced under this section to preventive detention may appeal against the sentence without the leave of the Court of Criminal Appeal (*ibid*, s 11. see p 433, *post*).

(*i*) Either before or after the passing of the Act (*ibid*, s. 12). *Quare* whether a sentence on two indictments of two consecutive terms of penal servitude, when each term is for less than five years, is a sentence of not less than five years (*R. v. Warner* (1909), 2 Cr App Rep 177).

(*j*) *Ibid*, s. 12.

(*k*) *Ibid*, s. 13 (1).

the circumstances of the case, and particularly to the time at which the offender, if he had been sentenced to penal servitude alone, would ordinarily have been licensed to be at large (*l*).

SECT. 2.  
Punishment  
of Special  
Classes of  
Offenders.

Treatment of  
person  
undergoing  
preventive  
detention.

**799** A person undergoing preventive detention is to be confined in any prison or part of a prison which the Secretary of State may set apart for that purpose, and, subject to the provisions of the statute, is to be subject to the law for the time being in force with regard to penal servitude, as if he were undergoing penal servitude (*m*), the rules applicable to convicts and convict prisons are to apply to a person undergoing preventive detention, and to the prison or part of a prison in which he is detained, with such modifications directing a less rigorous treatment as the Secretary of State may prescribe by prison rules (*n*)

Persons undergoing such detention are to be subjected to such disciplinary and reformatory influences and are to be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge (*o*)

#### SUB-SECT. 2.—*Habitual Drunkards*

**800** If a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, and the court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, a habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him (*p*)

Inebriates  
Act, 1898

A person who has been convicted on indictment of the offence of being a habitual drunkard may be sentenced to be detained for a term not exceeding three years in any certified reformatory the managers of which are willing to receive him (*q*)

(*l*) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 13 (1)

(*m*) *Ibid*, s 13 (2)

(*n*) *Ibid* As to prison rules, see Prison Act, 1898 (61 & 62 Vict c 41), s 2, and see title PRISONS

(*o*) Prevention of Crime Act, 1908 (8 Edw 7 c 59), s 13 (3) Such persons may be discharged on probation on licence (s 14), subject to provisions as to supervision (ss 14, 15) and to revocation of licence and rearrest (s 15), or may be discharged absolutely (s 16)

(*p*) Inebriates Act, 1898 (61 & 62 Vict. c 60), s 1 "Habitual drunkard" means a person who, not being amenable to any jurisdiction in lunacy, is by reason of habitual intemperate drinking of intoxicating liquor at times dangerous to himself or herself or others or incapable of managing himself or herself and his or her affairs (Habitual Drunkards Act, 1879 (42 & 43 Vict c 19) s 1. For an instance of a sentence under s 1 of the Inebriates Act, 1898 (61 & 62 Vict c 60), see *R v Prince* (1905), 1 Cr App. Rep. 252

(*q*) Inebriates Act, 1898 (61 & 62 Vict c. 60), s. 2 Detention in a reformatory is the only punishment which can be awarded under this section A sentence of imprisonment in addition cannot be inflicted (*R v Briggs*, [1909] 1 K B 381 C C A)

**SECT 2**  
**Punishment**  
**of Special**  
**Classes of**  
**Offenders**

A habitual drunkard who has been convicted of certain offences (*r*) may, with his consent, instead of being sentenced to imprisonment be ordered to be detained (*s*) in a "retreat" (*t*) the licensee of which is willing to receive him for a period not exceeding two years (*u*)

**SUB-SECT 3 — *Deportation of Aliens.***

**Expulsion**  
**of alien**  
**offenders**

**801** If an alien has been convicted in this country of felony or misdemeanour or other offence for which the court has power to impose imprisonment without the option of a fine, the court may, in addition to or in lieu of his sentence, recommend to the Home Secretary that an order be made for the expulsion of such alien from the United Kingdom (*r*), and the Secretary of State may thereupon make such an order

A similar order may be made (*y*), on the certificate of a court of summary jurisdiction, that an alien (1) has within three months been in the receipt of such parochial relief as disqualifies a person for the parliamentary franchise, or (2) has been found wandering without ostensible means of subsistence, or (3) has been living under insanitary conditions due to overcrowding, or (4), if he has entered England after 11th August, 1905, that he has been sentenced in a foreign country for an extradition crime (*a*)

**SUB SECT 4 — *Young Offenders and Borstal Institutions***

**Prevention**  
**of Crime**  
**Act, 1903**

**802** Borstal institutions are places in which young offenders (*i.e.*, persons of sixteen years of age and upwards, and not more than twenty-one) may be detained and given such industrial training and other instruction, and subjected to such disciplinary and moral influences, as will conduce to their reformation and the prevention of crime (*b*).

(*r*) Namely, any offence of cruelty within the meaning of the Children Act, 1905 (8 Edw 7, c 67), s 12, to a person under the age of sixteen, any offence under the Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 27, 60 or 66 or any offence against a person under the age of sixteen under the Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 3, 42, 43, 62 or 62, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), any offence under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict c 31, & 60 & 61 Vict c 52), any other offences involving bodily injury to a person under sixteen See Children Act, 1908 (5 Edw 7, c 67), s 26

(*s*) *Ibid*, s 12

(*t*) As to retreats, see Habitual Drunkards Act, 1879 (42 & 43 Vict c 19), ss 6 12 and Inebriates Act, 1888 (51 & 52 Vict c 19), s 4

(*u*) Children Act, 1908 (8 Edw 7, c 67), s 26 This section does not affect the power of the court to order him to be detained in a certified inebriate reformatory if he comes within the provisions of s 1 of the Inebriates Act, 1898 (61 & 62 Vict c 60) As to the meaning of "habitual drunkard," see note (*p*) on p 417, *ante*

(*x*) Aliens Act, 1905 (5 Edw 7, c 15), s 3 (1), see title ALIENS, Vol I, p 323

(*y*) *Ibid* s 3 (1) (*b*)

(*a*) As to what is an extradition crime, see Extradition Act, 1870 (33 & 34 Vict c 52), and title EXTRADITION AND FUGITIVE OFFENDERS

(*b*) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 4 This Act came into operation on 1st August, 1909 The Secretary of State may establish such institutions and with the approval of the Treasury authorise the Prison Commissioners to acquire land or erect or acquire any building, or appropriate the



A sentence of detention under penal discipline in a Borstal institution must be for a term of not less than one year and not more than three years. It may be passed on a person convicted on indictment of an offence for which he is liable to be sentenced to penal servitude or imprisonment, in lieu of a sentence of penal servitude or imprisonment, if it appears to the court that he is not less than sixteen and not more than twenty-one years of age, and that, by reason of his criminal habits or tendencies or association with persons of bad character, it is expedient that he should be subject to detention for such term, and under such instruction and discipline, as appears most conducive to his reformation and the repression of crime (c).

SECT 2  
Punishment  
of Special  
Classes of  
Offenders.

Sentence of  
detention in  
a Borstal  
institution

**803** A youthful offender sentenced to detention in a reformatory school (d) who has been convicted by a court of summary jurisdiction of the offence of committing a breach of the rules of the school or of inciting to such breach or of escaping from such a school, and is liable to be sentenced to imprisonment for any such offence, may be sentenced to detention in a Borstal institution instead of imprisonment (e).

**804** If a person being within the limits of age within which persons may be detained in a Borstal institution is undergoing a sentence of penal servitude or imprisonment passed either before or after December 21 1908, and the Secretary of State is satisfied that such person may with advantage be detained in a Borstal institution, the Secretary of State may authorise the Prison Commissioners to transfer him from prison to such an institution to serve there the whole or any part of the unexpired residue of his sentence, if he is

Transference  
of prisoner  
from prison to  
a Borstal  
institution

whole or any part of any land or building vested in them or under their control; expenses incurred for this purpose are to be paid out of moneys provided by Parliament (*ibid*). The Secretary of State may make rules for the management of any such institution and for the temporary detention of young offenders, and subject to such regulations the Prison Acts, 1865 to 1898 (28 & 29 Vict c 126, 31 & 32 Vict c 21, 40 & 41 Vict c 21, 41 & 42 Vict c 63, 47 & 48 Vict c 51, 49 & 50 Vict c 9, 56 & 57 Vict c 26), and their penal provisions and the rules thereunder are to apply to every such institution as if it were a prison (*ibid*).

(c) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 1. Before passing such sentence the court is to consider any report which may be made to it by or on behalf of the Prison Commissioners as to the suitability of the case for such treatment, and must be satisfied that the character, state of health and mental condition of the offender are such that he is likely to profit by such treatment (*ibid*, s 1 (1)). The Secretary of State may make an order extending the application of s 1 of the Prevention of Crime Act, 1908 (8 Edw 7, c 59), to persons apparently under such age, not exceeding twenty-three, as may be specified in the order (*ibid*, s 1 (2)); the order is not to be made until a draft of it has lain before each House of Parliament for not less than thirty days during the session of Parliament and neither House before the expiration of that period has presented an address to the King against the draft or any part of it: if such address is presented, a new draft order may be made (*ibid*, s 1 (2)). See *R v Kirkpatrick* (1908), 73 J P 29, C C A.

(d) See p 422, *post*.

(e) Prevention of Crime Act, 1908 (8 Edw. 7, c 59), s 2. The minimum and maximum term in such a case is the same as under s 1 (see *ante*). In such a case the sentence of detention in a Borstal institution supersedes the sentence of detention in a reformatory school (*ibid*, s 2).

## SECT 2

Punishment  
of Special  
Classes of  
OffendersDischarge  
by licence  
of person  
detainedSupervision  
of Prison  
Commis-  
sioners after  
expiration of  
sentenceCommutation  
of residue of  
term of  
detention to  
imprison-  
ment.Removal of  
detained  
personsPunishment  
of persons  
under  
sixteen.

so transferred, the Act is to apply to him as if he had been originally sentenced to detention in such an institution (*f*).

**805** Subject to regulations by the Secretary of State, the Prison Commissioners may at any time after the expiration of six months (or three months if the person is a female) from the commencement of the period of detention discharge by licence a person detained in a Borstal institution on condition that he is placed under the supervision or authority of any society or person named in the licence who is willing to take charge of him (*g*).

Every person sentenced to detention in a Borstal institution must on the expiration of the term of his sentence remain for a further period of six months under the supervision of the Prison Commissioners (*h*).

**806** If the visiting committee of a Borstal institution reports to the Secretary of State that a person detained there is incorrigible or is exercising a bad influence on the other inmates, the Secretary of State may commute the unexpired residue of the term of detention to such term of imprisonment, with or without hard labour, not exceeding the unexpired residue, as the Secretary of State may determine (*i*).

A person sentenced to detention in a Borstal institution in one part of the United Kingdom may be removed to and detained in a Borstal institution in another part (*k*).

SUB SECT 5 — *Youthful Offenders*

**807** The law relating to the punishment of persons under sixteen years of age is of an exceptional character (*l*).

Neither a sentence of death nor a sentence of penal servitude can be passed on a person under sixteen years of age (*m*).

A child under fourteen cannot be imprisoned at all (*n*), and a young person (*i.e.*, a person of fourteen years and upwards and under the age of sixteen) can only be imprisoned in exceptional cases (*o*).

The conviction of a child or young person is not to be regarded

(*f*) Prevention of Crime Act, 1908 (8 Edw 7, c 59), s 3

(*g*) *Ibid*, s 5 As to contributions from the public funds towards the expenses of such a society, see s 8 See as to revocation of licence and rearrest, s 5 (j), (4), (b), (6)

(*h*) *Ibid*, s 6 (1) See as to the recalling of such a person to a Borstal institution during this period, s 6 (2), (3), (4)

(*i*) *Ibid*, s 7

(*k*) *Ibid*, s 9 According as the person is detained in England, Scotland, or Ireland, the removal must be by the authority of the Secretary of State, the Secretary for Scotland, or the Lord Lieutenant of Ireland, and must be with the consent of that one of these authorities who acts for the part of the United Kingdom to which the person is removed (*ibid*)

(*l*) It is now governed chiefly by the provisions of the Children Act, 1908 (8 Edw 7, c 67), which came into force on 1st April, 1909 (*ibid*, s 134 (2))

(*m*) *Ibid*, ss 102 (1), (2), 103, 131 A sentence of death cannot be recorded against a person under sixteen (*ibid*, s 103)

(*n*) *Ibid*, ss 102 (1), 131

(*o*) *Ibid*, s 102 (3), see p 421, *post* The prohibition and restriction of imprisonment does not become operative until the 1st January, 1910 (s 112).

as a conviction for felony for the purposes of any disqualification attaching to felony (*p*)

**808** The punishments which can be awarded in the case of a person under sixteen are as follows (1) the offender may, according to the nature of the offence which he has committed, be detained in a place of detention or in an industrial or reformatory school or may be whipped, and if of the age of fourteen years or upwards may be fined or in exceptional cases (*q*) be imprisoned, (2) he may be discharged on his entering into a recognisance or placed under the supervision of a probation officer, or (3) the parent or guardian of the offender may be ordered to be fined or to give security for the good behaviour of the offender (*r*)

**SECT. 2.**  
**Punishment of Special Classes of Offenders**

Punishments which can be awarded to persons under sixteen.

**809** A person under sixteen convicted of an offence for which the punishment is death in the case of an adult must be sentenced to be detained during the King's pleasure, and when so sentenced is liable to be detained in such place and under such conditions as the Secretary of State may direct (*s*).

Detention during the King's pleasure.

**810** If a person under sixteen is convicted of manslaughter or an attempt to murder or of wounding with intent to do grievous bodily harm, and the court is of opinion that no punishment which it is authorised to inflict under the provisions of the Children Act, 1908, is sufficient (*u*), the court may sentence the offender to be detained for such period as may be specified in the sentence, a person on whom such a sentence has been passed is, during the specified period, liable to be detained in such place and on such conditions as the Secretary of State may direct (*b*)

Detention for specified period in such place as Secretary of State may direct.

**811** Where a person under sixteen is convicted of an offence punishable in the case of an adult with penal servitude or imprisonment, or would, if he were an adult, be liable to be imprisoned on default of payment of any fine, damages, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may order that he be committed to

Detention in place of detention for period not exceeding one month.

(*p*) Children Act, 1908 (8 Edw 7, c 67), s 100. As to disqualifications on the ground of felony, see p 428, *post*

(*q*) *Ibid*, s 102 (3)

(*r*) *Ibid*, s 107. This section enumerates the different methods possible in dealing with youthful offenders, but confers no power of inflicting any of the punishments mentioned, the punishment which may be awarded in a particular case is prescribed by other sections of the Children Act, 1908 (8 Edw 7, c 67) (see ss 57, 58 (2), 103—106), or by the general law (where it has not been altered by the Children Act, 1908 (8 Edw 7, c 67), or by statutes which provide punishment specially applicable to juvenile offenders, see p 423 *post*). Some of the methods enumerated in s. 107 only apply to courts of summary jurisdiction, *eg*, sub ss (a) and (d); see title **MAGISTRATES**.

(*s*) Children Act, 1908 (8 Edw 7, c 67), s 103.

(*u*) *I.e.*, it seems detention in a reformatory or industrial school (s 57) or *quare*, detention for a period of not more than a month in a place of detention provided under the Act (s 106), whipping is not a possible punishment for any of the offences specified in the text

(*b*) *Ibid*, s 104. There seems no limit fixed to the period during which such a person may be sentenced to be detained. As to the discharge of a person detained under s 103 or s 104, see s 105. See also Summary Jurisdiction (Children Act) Rules, 1909, W N (1909), pp 111, 269

## SECT 2

**Punishment  
of Special  
Classes of  
Offenders**

Detention in  
reformatory  
school.

custody in a place of detention (c) named in the order for such term as may be specified in the order, such term is not to exceed the term for which he might have been imprisoned but for the Act, and is not in any case to exceed one month (d)

**812** When a youthful offender who in the opinion of the court before which he is charged is twelve years of age or upwards is convicted either on indictment or by a petty sessional court of an offence punishable in the case of an adult with penal servitude, the court may, in addition to or in lieu of sentencing him to any other punishment, order that he be sent to a certified reformatory school. If such an offender is sent to such a school, he must not in addition be sentenced to imprisonment (e)

In industrial  
school

**813** A child apparently under the age of twelve years who is charged before a court of assize or quarter sessions or a petty sessional court with an offence punishable by penal servitude or a less punishment, may be sent to a certified industrial school (f)

When a  
person under  
sixteen  
may be  
imprisoned

**814** A person between fourteen and sixteen may be sentenced to imprisonment, if the court before which he is tried certifies that he is of so unruly a character that he cannot be detained in a place of detention provided under the Children Act, 1908 (g), or that he is of so depraved a character that he is not a fit person to be so detained (h). In no other case may a person under sixteen be sentenced to imprisonment after the 31st December, 1909 (i)

(c) The place of detention is to be one provided under the Children Act, 1908 (8 Edw 7, c 67), s 106

(d) *Ibid*. It is the duty of the London County Council in the metropolitan police district and the council of a county borough in a county borough and the standing joint committee of a county in a county, to provide such places of detention for every petty sessional division within their district as may be required for the reception of persons ordered to be detained under the Act, either by arranging with the occupiers of any premises within or without their district for the use of those premises for the purpose or by themselves establishing or joining with another police authority in establishing such places. The same place of detention may be provided for two or more petty sessional divisions (*ibid*, s 108 (1), (11)). The provisions of the Act which prohibit or restrict imprisonment (s 102 (1) (3)), and which impose the obligation to provide places of detention, do not become operative until the 1st January, 1910, but places of detention may be provided at any time after the passing of the Act (i.e., 21st December, 1908) (*ibid*, s 108 (10)), and persons under sixteen may be committed to such places if they are provided, and if the proceedings against such persons are commenced on and after the 1st April, 1909 (ss. 112, 113)

(e) *Ibid*, s 57 (1). The period of detention in a reformatory school is for not less than three and not more than five years, but is not in any case to extend beyond the time when the offender will, in the opinion of the court, attain the age of nineteen (*ibid*, s 65 (a))

(f) *Ibid*, s 58 (2). The child is to be sent to an industrial school for such a period as the court thinks proper for his teaching and training, but such period is not to extend beyond the time when the child will, in the opinion of the court, attain the age of sixteen (*ibid*, s 65 (b))

(g) 8 Edw 7, c 67.

(h) *Ibid*, s 102 (3).

(i) *Ibid*, ss 102 (3), 108 112.

**815** A male person under sixteen may be sentenced to be whipped in the case of all offences for which an adult person may be so sentenced (k)

A male person under sixteen may also be sentenced to be whipped for certain offences under the Larceny Act, 1861 (l), the Offences against the Person Act, 1861 (m), the Malicious Damage Act, 1861 (n), and the Criminal Law Amendment Act, 1885 (o)

Where a youthful offender of the age of twelve years and upwards, but under sixteen, is sent to a certified reformatory school, he may also, it seems, be sentenced to be whipped, if the offence which he has committed is one in respect of which the punishment of whipping may be inflicted (p)

It seems that if a person under sixteen is sentenced to detention for an offence (q) for which whipping may be ordered, a sentence of whipping may be added to such sentence (r)

**SECT 2**  
**Punishment**  
**of Special**  
**Classes of**  
**Offenders**  
**—**  
**Whipping**

(k) Children Act, 1908 (8 Edw 7, c 67), s 107 (g), and see p 411, *ante*. In the case of a whipping under the Garrolders Act, 1863 (26 & 27 Vict c 41), if the offender is under sixteen, the number of strokes is not to exceed twenty-five at each whipping, and the instrument used is to be a birch-rod (*ibid*)

(l) 24 & 25 Vict c 96. Such offences are simple larceny or any felony made punishable by the Larceny Act, 1861 (24 & 25 Vict c 96), like simple larceny (s 4), simple larceny after a previous conviction for felony (s 7), simple larceny or any offence made punishable by the Larceny Act, 1861 (24 & 25 Vict c 96), like larceny after two summary convictions for any offence made punishable summarily under the Act or the Malicious Damage Act 1861 (24 & 25 Vict c 97), or Larceny Act, 1861 (24 & 25 Vict c 96) (s 9)

(m) 24 & 25 Vict c 100. Such offences are injuring or attempting to injure persons by explosive or corrosive substances (ss 24-30), unlawfully and maliciously putting things on a railway etc with intent to endanger the safety of railway passengers (s 32). The Larceny Act, 1861 (s 119), the Offences against the Person Act, 1861 (s 70), and the Malicious Damage Act 1861 (s 75), provide that whenever whipping is awarded under each of these Acts the offender is to be once privately whipped, and the number of strokes and the instrument with which they are to be inflicted must be specified by the court in the sentence. Whipping can also be inflicted for certain offences dealt with by a court of summary jurisdiction under the Summary Jurisdiction Act 1879 (42 & 43 Vict c 49), s 10

(n) 24 & 25 Vict c 97. Such offences are setting fire or attempting to set fire to houses etc (ss 1-8)

(o) 48 & 49 Vict c 69, s 4 (unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of any girl under the age of thirteen). In a case of whipping under this statute the court is to specify the number of strokes and the instrument to be used in inflicting them, on a child not over fourteen the number of strokes is not to exceed twelve, and the instrument used must be a birch-rod, see *ibid*, s 4, Whipping Act, 1862 (25 & 26 Vict c 18)

(p) Children Act, 1908 (8 Edw 7, c 67), s 57 (1). The part of s 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), by which a person under sixteen who committed an offence under that section might be sentenced to be sent to a reformatory school as well as to be whipped was repealed by the Children Act, 1908 (8 Edw 7, c 67), *ibid*, Third Schedule, see s 57 of that Act.

(q) Not being an offence under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 4

(r) All the statutes which authorise whipping except the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 4, authorise it in addition to or in substitution for a sentence of imprisonment or penal servitude, the Children Act, 1908 (8 Edw 7, c 67), prohibits a sentence of penal servitude altogether, as regards persons under sixteen prohibits a sentence of imprisonment altogether

## SECT. 2

Punishment  
of Special  
Classes of  
Offenders.

## Fine etc.

**816** If a person under sixteen is charged with any offence for which a fine, damages, or costs may be imposed (s), and the court thinks that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may, and if the person is under fourteen, must, order that the fine, damages, or costs be paid by the parent or guardian of such person instead of by such person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of such person (t)

The court may make the same order in the case of a young person (of fourteen years and upwards, but under sixteen) or may order the young person to pay the fine etc (a)

Security  
for good  
behaviour.

**817** The court may, when a child or young person is charged with any offence, order his parent or guardian to give security for his good behaviour (b)

The orders just mentioned may be made against a parent or guardian who has been required to attend at the court and has failed to attend (c), but subject to this exception no such order is to be made without giving the parent or guardian an opportunity of being heard (d)

As regards children under fourteen, restricts it to exceptional cases as regards persons over fourteen and under sixteen (*ibid*, s 102), and allows a sentence of detention in a place of detention to be substituted for penal servitude and imprisonment (see p 421, *ante*) The point referred to in the text is somewhat obscure owing to the ambiguous language of s 107, which contains an enumeration of the "methods of dealing with young persons charged with offences", these methods are all set out in the alternative, but it is submitted that the section does not prohibit the infliction of more than one of the alternative punishments in any one case, if under any statute in force at the time of the passing of the Act more than one of the alternative punishments or of the punishments for which the Act provides a substitute could be inflicted. It is submitted that the intention of s 107 of the Act is only to give an enumeration of the different methods of dealing with young persons charged with offences, and that the Act is not intended to affect the provisions of those Acts which specifically deal with young persons, except by substituting detention for penal servitude and imprisonment, and see s 99 of the Act, which contemplates the infliction of more than one punishment.

(s) As to the cases when a fine may be imposed, see p 412, *ante*, as to damages, see p 449, *post*, as to costs, see p 445, *post*

(t) Children Act, 1908 (8 Edw 7, c 67), s 99 (1)

(a) *Ibid*, s 99 If a young person is fined and does not pay, and would, if he were an adult, be liable to be imprisoned for non-payment, he may be committed to a place of detention under *ibid*, s 106

(b) *Ibid*, s 99 (2)

(c) See *ibid*, s 98, as to requiring the attendance of a parent or guardian at a court before which a child or young person charged with an offence is brought.

(d) *Ibid*, s 99 (4) Any sums ordered to be paid by a parent or guardian under s 99 or on forfeiture of a security for the good behaviour of a child or young person ordered under s 99 (2) may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian for the offence with which the child or young person is charged (s 99 (5)) If such an order is made by a court of assize or quarter sessions an appeal lies against it to the Court of Criminal Appeal, as if the parent or guardian had been convicted on indictment and the order was a sentence passed on his conviction (s 99 (6))

**818.** A person under sixteen who has been convicted on indictment may, like an adult person, be ordered to enter into recognisances, with or without sureties, to keep the peace and be of good behaviour, and such recognisances may be in addition to or in substitution for any other punishment

**SECT. 2.**  
**Punishment of Special Classes of Offenders.**

A person under sixteen may be released without punishment on his entering into recognisances, or he may be placed under the supervision of a probation officer during a period of probation, which is not to exceed three years (c).

**Recognisances**

### **SECT. 3.—Principles that determine the Amount of Punishment**

**819** In all crimes except those for which the sentence of death must be pronounced (f) a very wide discretion in the matter of fixing the degree of punishment is allowed to the judge who tries the case

**Discretion of court as to punishment**

The policy of the law is as regards most crimes to fix a maximum penalty, which is only intended for the worst cases (g), and to leave to the discretion of the judge to determine to what extent in a particular case the punishment awarded should approach to or recede from the maximum limit. The exercise of this discretion is a matter of prudence and not of law, but an appeal lies by the leave of the Court of Criminal Appeal against any sentence, and if leave is given, the sentence can be altered by that court (h).

In carrying out the task of reviewing sentences the Court of Criminal Appeal will, it seems, be guided by the general principles that govern the awarding of punishment and by the practice of criminal courts, and will apply these principles and this practice to the circumstances of each case (i).

**820** The object of punishment is the prevention of crime, and every punishment should have a double effect, namely, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes (k).

**Object of punishment**

As regards the particular offender there are three ways of

(c) See p 421, *ante*, and Probation of Offenders Act, 1907 (7 Edw 7, c 17), s 1 (2). As to sending children to industrial schools and the removal of children and young persons from the custody of criminal parents, see titles **EDUCATION, INFANTS AND CHILDREN**

(f) See p 409, *ante*

(g) *R v Harrison* (1909), 2 Cr App R 94

(h) Criminal Appeal Act, 1907 (7 Edw 7, c 23), see p 432, *post*. Before the passing of this Act the discretion of a judge in sentencing a prisoner was not subject to review by any judicial tribunal, and the punishment ordered if justified by law, could only be modified by the Crown exercising the prerogative of mercy on the advice of the Home Secretary.

(i) See p. 485, *post*

(k) 4 Bl Com 11, Bentham, *Rationale of Punishment*, p 19. "The prevention of offences divides itself into two branches - particular prevention, which applies to the delinquent himself, and general prevention, which is

**SECT 3**  
**Principles**  
**that deter**  
**mine the**  
**Amount of**  
**Punishment**

providing by punishment against the recurrence of an offence (1) by taking from him the power of offending (incapacitation), (2) by taking away the desire of offending (reformation), (3) by making him afraid of offending (intimidation) (l)

In some cases, besides providing for the prevention of crimes in future, punishment may also include reparation for the past injury by ordering the offender to compensate the person injured (m)

As regards other members of the community who are disposed to commit similar offences, the only way of providing by punishment against the commission of the offence is by the terror which the punishment of an individual produces in others

**Application**  
**of principles**

**821** Thus, if a crime has been committed which is of a kind calculated to inspire great alarm, as manifesting a very mischievous disposition, or is specially rife in a particular district or throughout the country, it may be necessary to award a very severe punishment and to take away from the offender the power of committing such a crime or any crime for a long period (n) If the crime is less dangerous, and the offender may be allowed to return to society after a shorter period of detention, the punishment should possess qualities calculated to reform or to intimidate him (o), or if there are exceptional circumstances, punishment may be respite and the offender may be given a chance of leading an

applicable to all the members of the community " See also p 20 "General prevention ought to be the chief end of punishment, as it is its real justification If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless

But when we consider that an unpunished crime leaves the path open not only to the same delinquent, but also to those who may have the same motives and opportunities for entering upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all Punishment is elevated to the first rank of benefits, when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety "

(l) Bentham, *Rationale of Punishment*, 20

(m) For an example of this, see *Forfeiture Act*, 1870 (33 & 34 Vict c 23), ss 4, 13, p 449, *post* A criminal court may make an order for the restitution of property on a conviction for larceny of a similar offence (see p 684, *post*)

(n) *E.g.*, by sentencing him to a long period of penal servitude and by awarding, where it is possible, an exceptional punishment, such as flogging (see the *Garrothers Act*, 1863 (26 & 27 Vict c 44), s 1) See, too, *R v Spencer* (1908), 1 Cr App Rep 37, where the Court of Criminal Appeal refused to interfere with a sentence of twelve years' penal servitude passed on a burglar although it was his first conviction and although he had previously borne a good character, but in that case the prisoner, though he had ample means to lead a honest life, was found with a full equipment for committing burglaries, and the marks on fifteen houses in the neighbourhood which had been burglariously entered were marks that might have been made by a jemmy found in his possession, and the neighbourhood had been so terrorised by burglaries that ninety policeman had had to patrol the district, see also *R v Boyd* (1908), 1 Cr App Rep 64, where it was held that an "epidemic" of burglaries in a neighbourhood might be taken into account in fixing the sentence on a burglar. See *R v Warner* (1909), 2 Cr App Rep 177

(o) Bentham, *Rationale of Punishment*, 21



honest life under a condition that if he does not do so he will be subjected to punishment (*p*)

**822** The court, in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he has received, if the crime is one of violence, the antecedents of the prisoner up to the time of sentence, his age and character, and, except in the case of habitual criminals, any recommendation to mercy which the jury may have made (*q*).

**SECT. 2.**  
**Principles that determine the Amount of Punishment.**

**Matters to be considered in fixing punishment**

(*p*) See *R v Francis* (1908), 1 Cr App Rep 259

(*q*) "The fundamental rule of criminal judicature" is "that the measure of punishment should be in proportion to the malignity appearing in the intention of the offender" (*per ASHURST, J, R v Stratton* (1779), 21 State Tr 1043, at p 1291) See *R v Weaver* (1908) 1 Cr App Rep 12, *R v Arnold* (1908), 1 Cr App Rep 27, *R v McGuire* (1908), 1 Cr App Rep 38, *R v Maurice* (1908), 1 Cr App Rep 176, *R v Riley* (1908), 1 Cr App Rep 93, *R v Boyd* (1908), 1 Cr App Rep 64, *R v Spencer* (1908), 1 Cr App Rep 37, *R v Prince* (1908), 1 Cr App Rep 252, *R v Concannon* (1908), 1 Cr App Rep 229, *R v Kirkpatrick* (1908), 73 J P 29, O O A., *R v Nuttall* (1908), 1 Cr App Rep 180, *R v Morton* (1908), 1 Cr App Rep 205, *R v O'Connell* (1909), 2 Cr App Rep 11 The previous good character of a prisoner may be a reason for inflicting a light or nominal sentence upon him, especially when he has been in employment and his employer is willing to take him back (*R v Francis* (1908), 1 Cr App Rep 259) But good character is not to be taken into consideration, when by means of good character a person has obtained an opportunity for committing the offence charged (*R v Siddow* (1908), 1 Cr App Rep 28) So in considering the punishment to be passed on persons in positions of trust for misappropriation of money or other property good character has little weight, and is often an aggravating circumstance (see *R v Super* (1908), 1 Cr App Rep 73) A crime by a person in a position of trust who abuses the trust imposed upon him is punished with greater severity than a crime by a person who stands in no fiduciary or confidential relation to the person injured (*R v Siddow supra*, *R v Super, supra*)

In larceny and similar crimes the value of the property stolen may be a matter to be considered, for if a person were punished with the same severity for stealing a thing of small value as for stealing a thing of great value, a dishonest person would always prefer committing a theft on a large scale (Bentham, *Rationale*, 36, 41, *R v Nuttall* (1908), 1 Cr App Rep 180, *R v Morton* (1909), 2 Cr App Rep 145) But there are many cases where the severity of the punishment does not depend on the value of the property stolen, as where a prisoner is convicted of stealing something of small value, but the crime which is brought home to him is only one of a series of similar offences (*R v Maurice* (1908), 1 Cr App Rep 176, where a sentence of five years' penal servitude for stealing one penny was upheld by the Court of Criminal Appeal, but the prisoner had been guilty of systematic frauds extending over a long period, and the sentence was supported as a means of keeping her out of mischief, and see *R v Rens* (1908), 1 Cr App Rep 83, where a sentence of penal servitude for a trifling theft by a person who had been convicted several times before for crimes arising out of drink was upheld as the only means of reclaiming her) It is the practice of criminal courts before passing sentence to inquire into the antecedents of a prisoner and to punish habitual offenders more severely than those who have not been previously convicted or have not committed other crimes (*R v Weaver* (1908), 1 Cr App Rep 12) But it is not right to be guided merely by previous convictions, and if the offence for which punishment is to be awarded does not indicate a deliberate return to crime, and there are circumstances which do not show that the offence was planned beforehand, less weight is to be given to previous offences (*R v Nuttall* (1908), 1 Cr App Rep 180) More

## SECT. 4

Disqualifications  
following on  
Conviction

Forfeiture of  
office etc  
by person  
convicted of  
felony.

SECT 4 — *Disqualifications following on Conviction.*SUB-SECT 1 — *Forfeiture of Office*

**823** If a person convicted of treason or felony holds any military or naval office or any civil office under the Crown, or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation, or is entitled to any pension or superannuation allowance payable by the public or out of any public fund, and is sentenced to death or penal servitude or any term of imprisonment with hard labour, or a term of imprisonment without hard labour exceeding twelve months, such office, benefice, employment or place forthwith becomes vacant, and the pension or superannuation allowance or emolument forthwith determines and ceases to be payable, unless such person receives a free pardon from the King within two months of his conviction or before the filling up of such office etc (r)

weight should be given to previous convictions for offences of the same character as that for which the offender is to be punished than to convictions for offences of a different character (*R v Boucher* (1909), 2 Cr App Rep 177) And a first offender may commit an offence of such malignity that a severe sentence should be imposed, and the absence of previous convictions may be disregarded as only showing that the offender has not been found out before (see *R v Spencer* (1908), 1 Cr App Rep 37)

If a person has been convicted of a crime and there are other charges hanging over him in respect of which he has not been indicted, the judge in passing sentence should, if the prisoner consents, take the other charges into account, and in such a case it is not usual to proceed with these other charges. If such charges are not taken into account and the prisoner is subsequently convicted in respect of any of them, the sentence already inflicted on the prisoner in respect of the earlier charge is a ground for a mitigation of the sentence for the later one (*R v Sykes* (1908), 1 Cr App Rep 172, *R v Hawes* (1908), 1 Cr App Rep 42, *R v Marlham* (1909) 2 Cr App Rep 160, *R v Alton* (1909), 2 Cr App Rep 152, *R v Taylor* (1909), 2 Cr App Rep 158)

The fact that a person committed a crime when in a state of drunkenness may be a mitigating circumstance as negating deliberateness of intention (*R v Nuttall* (1908), 1 Cr App Rep 180, *R v Morton* (1908), 1 Cr App Rep 255, *R v Hoden* (1909), 2 Cr App Rep 148, *R v Meade* (1909), 2 Cr App Rep 54, and see p 242, ante), but drunkenness is put forward by prisoners too frequently as an excuse for crime to be deserving of much consideration, and may be a ground for passing such a sentence as will debar the prisoner for some time from the use of intoxicating liquors (*R v Rees* (1906), 1 Cr App Rep 83)

A long period of detention is often justifiable with the object of incapacitating an offender from committing crimes for a considerable period or of reclaiming him (*R v Maurice, supra*, *R v Rees, supra*), and even in the case of those who are not hardened criminals it may be justifiable and desirable to impose a sentence of sufficient length to enable the offender to undergo a special treatment (e.g., the Borstal system) (*R v Kirkpatrick* (1908), 73 J P 29, C C A 1)

In cases where personal injuries are inflicted the amount of provocation that the prisoner received is a matter to be taken into account in fixing the sentence (*R v O'Connell* (1909), 2 Cr App Rep 11)

For some offences, e.g., manslaughter or wounding with intent to do grievous bodily harm, it is impossible to lay down any standard as to what is the proper punishment, the question depends on the circumstances of each particular case (*R v Gorman* (1909), 2 Cr App Rep 187)

(r) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 2 Attainder or corruption of blood, and forfeiture or escheat on conviction of treason or felony were abolished by this Act (s. 1). The provision as to disqualification arising from a conviction for felony does not apply to a person under sixteen (Children Act, 1908 (8 Edw. 7, c. 67), ss. 100, 131)

**824** Such person on his conviction becomes, and until he has suffered the punishment allotted or any punishment lawfully substituted, or until he receives a free pardon, continues to be incapable of holding any such office, employment, or benefice or of being elected or sitting or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland (s)

SECT. 4.  
Disqualifications following on Conviction

Incapacitation of person convicted of felony

**825** A convict (*i.e.*, a person against whom judgment of death or of penal servitude has been pronounced or recorded by any court of competent jurisdiction in England, Wales, or Ireland upon any charge of treason or felony) cannot bring an action for the recovery of any property, debt, or damage while he is subject to the operation of the Forfeiture Act, 1870 (*t*), and cannot alienate or charge any property or make any contract (*u*)

SUB-SECT. 2 — Appointment of Administrator of Convict's Property

**826** The King, or any person in that behalf authorised by the King under the royal sign manual, may by writing commit the custody and management of the property of any such convict to an administrator. Such appointment may be revoked or may be determined by death, and thereupon a new administrator may be appointed (*v*). On the appointment of any such administrator all the real and personal property, including choses in action, to which the convict was entitled at the time of his conviction, or to which he may be entitled after his conviction, vests in the administrator for all the estate and interest of the convict therein (*x*). The administrator has absolute power to let, mortgage, sell, and transfer any part of the convict's property (*y*). He may pay out of the convict's property all costs and expenses which the convict may have been condemned to pay and all costs, charges, and expenses incurred by the convict in and about his defence, and all costs, charges, and expenses which the administrator may incur in carrying out his duties with reference to such property or to any claims made against it (*z*). He may also pay or satisfy any debt or liability of the convict which may be established in due course of law or may otherwise be proved to his satisfaction, and may also cause any property which may come to his hands to be delivered to any person claiming to be justly entitled to it, if the right of such person is established in due course of law or otherwise proved to the satisfaction of the administrator (*a*)

Appointment of administrator of property of convict

• (s) Forfeiture Act, 1870 (33 & 34 Vict c 23), s 2

(t) 33 & 34 Vict c 23

(u) *Ibid* s 8, see *ibid*, s 6. On the death or bankruptcy of the convict or on his suffering the full term of his punishment or any other substituted punishment, or on his receiving a free pardon, he ceases to be subject to the operation of the provisions contained in ss 28, 29 of the Act (*ibid*, s 7). And see title ACTION, Vol. I, p 29

(v) *Ibid*, s 9

(x) *Ibid*, s 10. See *Re Gaskell and Walters' Contract*, [1906] 1 Ch 440, 2 Ch 1, C A, as to powers of administrator

(y) *Ibid*, s 12. See *Carr v Anderson*, [1903] 1 Ch. 90, affirmed 2 Ch 279, C A.

(z) *Ibid*, s 13

(a) *Ibid*, s 14

## SECT 4

**Disqualifications following on Conviction**

Compensation to person injured by criminal or fraudulent act of convict

He may make compensation for any loss of property or other injury alleged to have been suffered by any person through or by means of any alleged criminal or fraudulent act of the convict, although no proof of such alleged criminal or fraudulent act may have been made in any court (b), and may make such allowances as he may think fit for the support of the convict's wife or child or any relative dependent on the convict for support, or of the convict himself, if he is at large under licence (c)

The exercise by the administrator of the powers conferred upon him is binding upon, and is not to be questioned by, the convict or by any person claiming an interest in the convict's property (d).

Revesting of convict's property in convict

**827** Subject to the exercise of the powers conferred on the administrator, the convict's property is to be preserved and held in trust by the administrator and is to revert in the convict, should his disability be removed, or in his heirs or legal personal representatives, or such other persons as may be lawfully entitled to such property, and the powers given to the administrator are thereupon to determine (e)

Interim curator of convict's property

**828** If no administrator is appointed, an interim curator of the property of the convict may be appointed by any justices in petty sessions or by any justice of the peace having jurisdiction in the place where the convict before his conviction had his last usual residence, the powers of the interim curator are similar to those of the administrator (f)

Every administrator and interim curator is to be accountable to the convict for all property which has been possessed or received by the administrator etc and not duly administered (g)

Property acquired by a convict while he is lawfully at large under a licence does not vest in the administrator or interim curator (h)

Disqualifications on conviction

**829** There are certain special disqualifications which follow on a conviction on indictment for particular criminal offences (i)

(b) Forfeiture Act, 1870 (33 & 34 Vict c 23), s 15

(c) *Ibid*, s 16

(d) *Ibid*, s 17

(e) *Ibid*, s 18

(f) *Ibid*, ss 21—27

(g) *Ibid*, s 29

(h) *Ibid*, s 30

(i) A beneficed clergyman convicted for treason or felony, or convicted on an indictment for misdemeanour, and sentenced on any such conviction to imprisonment with hard labour or any greater punishment, forfeits his benefice and becomes incapable of holding preferment (Clergy Discipline Act, 1892 (55 & 56 Vict c 32), s 1) A person convicted of felony is for ever disqualified from selling beer and cider or wine or spirits by retail (Beerhouse Act, 1840 (3 & 4 Vict c 61), s. 7, Wine and Beerhouse Amendment Act, 1870 (33 & 34 Vict c 29), s. 14, Refreshment Houses Act, 1860 (23 & 24 Vict c 27), s 22) A person convicted of felony cannot serve as parish constable (Parish Constables Act, 1842 (5 & 6 Vict c 109), s 7) A person convicted of a crime and sentenced to imprisonment with hard labour or any greater punishment cannot for five years from his sentence be a parish or district councillor or a guardian of the poor (Local Government Act, 1894 (56 & 57 Vict c 73), s 46 (1)(c)). No person convicted of felony, fraud, or perjury can hold any parish office or have the management of the poor in any way whatever (Poor Law Amendment Act, 1834

Such disqualifications, so far as they create any incapacity, are removed if the offender receives a free pardon (j)

It is not clear whether the endurance of punishment has, as regards the removal of disqualifications, the same effect as a pardon (k)

SECT. 4.  
Disqualifications  
following on  
Conviction

#### SUB-SECT. 3.—Outlawry

**830** Outlawry in criminal proceedings is a process issued against a person with regard to whom an indictment has been found by a grand jury, and who does not appear to plead to the indictment, or after pleading does not appear to receive sentence, and whose apprehension cannot be effected before the judgment in outlawry is pronounced (l)

What  
outlawry is

If after the issue of certain writs and the making of certain

(4 & 5 Will. 4, c. 76), s. 46) this section is repealed so far as relates to a parish or district councillor or guardian, but remains in force as to other persons (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 89 and schedule) If any one who has been convicted of forgery or of wilful and corrupt perjury or subornation of perjury or common barratry afterwards acts as a solicitor in any action brought in any court of law or equity in England, he is liable to be sent to penal servitude for seven years (Frivolous Arrests Act, 1725 (12 Geo. 1, c. 29), s. 4) A medical practitioner, apothecary, or dentist who has been convicted of felony or misdemeanour may be removed from the register (Medical Act, 1858 (21 & 22 Vict. c. 90), s. 29, Apothecaries Act Amendment Act, 1874 (37 & 38 Vict. c. 34), s. 4, Dentists Act, 1878 (41 & 42 Vict. c. 33), s. 13) Veterinary surgeons convicted of misdemeanours or greater offences may be removed from the register (Veterinary Surgeons Act, 1861 (14 & 15 Vict. c. 62), s. 6) As to disqualifications from convictions for corrupt practices, see title ELECTIONS By the Juries Act, 1870 (33 & 34 Vict. c. 77), s. 10 no man who has been attainted of any treason or felony or convicted of any crime that is infamous, unless he shall have obtained a free pardon, and no man who is under outlawry, is qualified to serve on a jury, attainder for treason or felony had already been abolished at the time of the passing of the Act (see note (r) on p. 114, *ante*), and it is not clear what is the effect of the provision, so far as it relates to attainder, while outlawry has gone out of use

(j) See *Hay v. Tower Division of London Justices* (1889), 21 Q. B. D. 561

(k) If an offender has been convicted of any felony not punishable with death and has endured the punishment awarded, the endurance of punishment has the same effects and consequences as a pardon under the Great Seal (Civil Rights of Convicts Act, 1828 (9 Geo. 4, c. 32), s. 3) There is some doubt as to whether the endurance of punishment removes the incapacity to hold a retail spirit licence under the Wine and Beerhouse Amendment Act, 1870 (33 & 34 Vict. c. 29), s. 14, and similar incapacities In *R v. Vine* (1875) L. R. 10 Q. B. 195, it was held that on the passing of that Act, a person who had been convicted of felony, although he had served his sentence, became disqualified for ever for holding a licence, but the Civil Rights of Convicts Act, 1828 (9 Geo. 4, c. 32), was not referred to in that case (though POLLOCK, B., in *Hay v. Tower Division of London Justices*, *supra*, at p. 566, seems to have thought it was), and the effect of the endurance of punishment was not considered, see *Leyman v. Latimer* (1877), 3 Ex. D. 15

(l) See Corner, Crown Practice, 240, Short and Mellor Practice of the Crown Office, 2nd ed., 270–271 Outlawry in civil proceedings has been abolished (Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), s. 3) Outlawry in criminal cases has never been abolished It has, however, passed into disuse. The last instance of any proceeding in outlawry was in *R v. Tempest (Thos.)*, Short and Mellor, Practice of the Crown Office, 2nd ed., 270, but no judgment was pronounced in that case as the defendant surrendered The last judgment of outlawry was in *R v. Swahey* (1800), see Short and Mellor, Practice of the Crown Office, 2nd ed., 270

SECT 4  
Disquali-  
fications  
following on  
Conviction.

Judgment of  
outlawry.

proclamations the defendant is not found, judgment of outlawry may be pronounced against him (*m*)

In the case of offences punishable with death judgment of outlawry makes the person liable to suffer death and confiscation of property, on the defendant being brought before the court execution is awarded on the judgment of outlawry without any further judgment (*n*)

In other cases judgment of outlawry renders the defendant liable to perpetual imprisonment, and to the forfeiture of his personal property and the profits of his real estate (*o*)

In the case of indictments for treason and felony a judgment of outlawry operates as a conviction upon such indictments (*p*) In the case of indictments for misdemeanour such judgment does not so operate (*q*).

Traversing  
and reversal  
of outlawry

**831** A defendant upon a charge of treason who has been outlawed may appear in the High Court of Justice within a year, and traverse the outlawry, and undergo trial on the indictment (*r*)

Where a defendant upon a charge of felony or misdemeanour has been outlawed, there appears to be no means now provided for securing the reversal of such outlawry (*s*) The only way in which such judgment of outlawry can be rendered inoperative is by a royal pardon or by an Act of Parliament (*a*)

## Part VIII.—Appeals in Criminal Cases.

### SECT 1—*The Court of Criminal Appeal.*

Appeal to  
Court of  
Criminal  
Appeal

**832** Any person who has been convicted on indictment can appeal to the Court of Criminal Appeal (*b*) against his conviction and his sentence—in some cases as of right, in other cases by leave (*c*) This is the only way of questioning a conviction on

(*m*) Corner, Crown Practice, 240, Short and Mellor, Practice of the Crown Office, 2nd ed., 270—271, Crown Office Rules, 1906, rr 89—101

(*n*) See *R v Holloway* (1684), 10 State Tr 1, 5, *R v Armstrong* (*Sir Thomas*) (1664), 10 State Tr 105, 111, *R v Wilkes* (1770), 19 State Tr 1075, at p 1098

(*o*) *R v Wilkes*, *supra* The Forfeiture Act, 1870 (33 & 34 Vict c 23), does not apply to forfeiture on outlawry (*ibid*, s 1)

(*p*) *R v Holloway*, *supra* 4 Bl Com 314, 2 Hawk P C, c 48, s 22.

(*q*) *R v Tippen* (1689), 2 Salk 494

(*r*) *Armstrong's* (*Sir Thomas*) *Case* (1684), 10 State Tr 105

(*s*) The reversal of a sentence of outlawry in cases where the defendant was charged with felony or misdemeanour was formerly obtainable by means of a writ of error (see Crown Office Rules, 1906, r 107) But writs of error are now abolished (Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20) See as to outlawry, Law Quarterly Review, Vol XVIII, p 297, "Is Outlawry Obsolete?" by Sir H Erle Richards

(*a*) See *R v Collier* (1680), 7 State Tr 1043, Hargrave, Juridical Arguments and Collections, Vol II, p 226.

(*b*) For the constitution, jurisdiction, judges, and officers of the court, see title COURTS, pp 91—94, *ante*

(*c*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 3.

indictment, except in the case of a conviction for non-repair etc of a highway etc. (*d*)

Writs of error are abolished (*e*), but it seems that in all cases in which error could have been brought before the Criminal Appeal Act, 1907 (*f*), an appeal will now lie as on a question of law to the Court of Criminal Appeal, and that the effect of the abolition of writs of error is only to alter the procedure in cases in which such writs would have been applicable. The powers and practice formerly existing in the High Court of Justice in respect of motions for new trials and the granting of new trials in criminal cases are abolished (*g*). The Court of Criminal Appeal have no power to order a new trial (*h*).

A person who has been convicted on indictment may also appeal to the Court of Criminal Appeal by way of case stated (*i*), if the judge who tried him consents to grant a case (*k*).

**833** If the Attorney-General gives a certificate to the Director of Public Prosecutions or to the prosecutor or defendant that the decision of the Court of Criminal Appeal in a particular case involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, an appeal will lie from the Court of Criminal Appeal to the House of Lords, in all other cases the determination of the Court of Criminal Appeal is final and no appeal lies from it (*l*).

**834** A person who has been convicted on an indictment may appeal to the Court of Criminal Appeal without leave on any ground of appeal which involves a question of law alone. If the judge who tries him certifies that the case is a fit one for appeal, or if the Court of Criminal Appeal give leave, such a person may appeal

# SECT 1 The Court of Criminal Appeal

Abolition of writs of error and new trials in criminal cases

Appeal by case stated

When appeal lies to House of Lords

ent  
without  
leave

(*d*) On a conviction on an indictment for non-repair of highway etc the appeal lies, not to the Court of Criminal Appeal, but to the Court of Appeal.

(*e*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (1).

(*f*) 7 Edw 7, c 23.

(*g*) *Ibid.*, s 20 (1). It is not clear whether this applies to a case where an indictment has been removed by *certiorari*. A new trial may still be granted by the Court of Appeal in the case of an indictment for non-repair of a highway etc.

(*h*) *R v Dyson* (1908), 1 Cr App Rep 13, *R v Dibble* (1908), 1 Cr App Rep 155, *R v Colclough* (1909), 2 Cr App Rep 84, *R v Lewis* (1909), 78 L J. (K B) 722, O O A.

(*i*) See Crown Cases Act, 1848 (11 & 12 Vict c 78).

(*k*) *Ibid.*, ss 1, 2. By the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (4), all the jurisdiction under the Crown Cases Act, 1848 (11 & 12 Vict c 78), which was originally vested in the judges of the Courts of King's Bench, Common Pleas, and Exchequer, and was by the Judicature Act, 1873 (36 & 37 Vict c 66), s 47, transferred to the judges of the High Court of Justice, is now vested in the Court of Criminal Appeal. That court may decide that the procedure under the Crown Cases Act, 1848 (11 & 12 Vict c 78) as to the statement of a case should be followed, and require a case to be stated accordingly under that Act in the same manner as if a question of law had been reserved (Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (4)). It seems that a case may still be stated under the Crown Cases Act, 1848 (11 & 12 Vict c 78), without any such order, if the presiding judge at the trial consents to state a case.

(*l*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 1 (6).

**SECT. 1**  
**The Court**  
**of Criminal**  
**Appeal**

Appeal  
with leave

Ground for  
allowing  
appeal  
against  
conviction

against his conviction on any ground of appeal which involves a question of fact alone or a mixed question of law and fact, or any other ground which appears to the court to be a sufficient ground of appeal. If the Court of Criminal Appeal give leave, such a person may appeal against the sentence passed upon him, unless the sentence is one fixed by law (*n*)

**835** On an appeal being brought against a conviction the court are to allow the appeal, if they think—

(1) That the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence (*n*),

(2) That the judgment should be set aside on the ground that the decision of the court below was wrong on any question of law (*o*),

(*n*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 3. A person sentenced to preventive detention under the Prevention of Crime Act, 1908 (8 Edw 7, c 59), may appeal without leave against such a sentence, see *ibid.*, s 11. The sentence of death is fixed by law in cases of murder, treason, piracy, burning the King's ships etc., and see p 409, *ante*. For form of certificate by the judge at the trial, see Criminal Appeal Rules, 1908, schedule, Form 1. "Sentence" in the Criminal Appeal Act includes any order of court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the court as to the making of an expulsion order in the case of a person convicted who is an alien (Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 21). The "conviction" against which the appeal is brought means here, it seems, the verdict of the jury, and not the sentence of the court (*R v Miles* (1890), 24 Q B D 423, C C R, *R v Blaby*, [1894] 2 Q B 170, C C R), but see *Burgess v Booteffeur* (1844), 7 Man & G 481, at p 504. There is no appeal against the finding of a jury that a prisoner is fit to plead (*R v Jefferson* (1908), 1 Cr App Rep 95). There is no appeal against a sentence substituted by the King on the recommendation of the Home Secretary for a death sentence (*R v Lord* (1908), 1 Cr App Rep 110). A prisoner who pleads guilty will only in very exceptional circumstances be allowed to appeal against his conviction, but he may by leave appeal against his sentence (*R v Lucas* (1908), 1 Cr App Rep 61, *R v Elfridge*, [1909] 2 K B 21, C C A (overruling *R v Davidson* (1909), 2 Cr App Rep 51), *R v Sneyby* (1909), 2 Cr App Rep 178, in *R v Ferney* (1909), 2 Cr App Rep 107 leave was given in exceptional circumstances to a prisoner to appeal against his conviction and to call evidence, and the conviction was quashed). As to appeals against sentence, see p 435, *post*.

(*o*) Criminal Appeal Act, 1907 (7 Edw. 7, c 23), s 4 (1). These words are adopted from the judgment of the House of Lords in *Metropolitan Rail Co v Wright* (1886), 11 App Cas 152, which lays down the rules according to which the verdict of a jury in a civil case will or will not be supported (*R v Ashford* (1908), 1 Cr App Rep 185). For instances of the verdict of the jury being set aside by the Court of Criminal Appeal on the ground that there was no evidence or no sufficient evidence to support it, see *R v Osborne* (1908), 1 Cr App. Rep 144, *R v Pearson* (1908), 1 Cr App Rep 77, *R v Dibble* (1908), 1 Cr App. Rep 155, *R v Orris* (1908), 1 Cr App Rep 199, *R v Dunleavy* (1908), 1 Cr App Rep 240, *R v Tate* (1908), 1 Cr App Rep 39, *R v Warren* (1909), 25 T L R 633 C C A, *R v Leach* (1909), 2 Cr App Rep 72, *R v Nicholson* (1909), 2 Cr App Rep 195. But the court will not retry a case on evidence properly submitted at the trial to the jury (*R v Martin* (1906), 1 Cr App Rep. 52, *R v Mason* (1908), 1 Cr App Rep. 73, at p 75), nor give leave to appeal where the only ground is that the verdict is against the weight of evidence (*R v Burke* (1908), 1 Cr App Rep 245).

(*o*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 4 (1). In the following cases a judgment has been set aside on the ground of misdirection — *R v Dyson*,



(8) That on any ground there was a miscarriage of justice (p)

In any other case the court are to dismiss the appeal, and even if they think that the point raised in the appeal might be decided in favour of the appellant they may dismiss the appeal, if they consider that no substantial miscarriage of justice has actually occurred (q)

If the court allow an appeal against a conviction, they must quash the conviction and direct a judgment and verdict of acquittal to be entered (a)

SECT. 1  
The Court  
of Criminal  
Appeal

**836** On an appeal against sentence the court, if they think a different sentence should have been passed, are to quash the sentence and pass such other sentence warranted in law as they think ought to have been passed, and in other cases are to dismiss the appeal; the substituted sentence may be more or less severe than the sentence passed, a different sentence may be passed, whether the appellant has or has not pleaded guilty (b)

Appeal  
against  
sentence.

[1908] 2 K B 454, *R v Sorensen* (1908), 1 Cr App Rep 98, *R v Warren* (1909), 25 T L R 633, *R v Mason* (1909), 73 J P 250, *R v Stoddart* (1909), 25 T L R 612. In the following cases the court refused to set aside the judgment as there had been no misdirection or no substantial misdirection: *R v Hunting* (1908), 1 Cr App Rep 177, *R v Lovett* (1908), 1 Cr App Rep 111, *R v Meyer* (1908), 1 Cr App Rep 10, *R v Nicholls* (1908), 73 J P 11 (C C A), *R v Handley* (1908), 1 Cr App Rep 194, *R v Joyce* (1908), 1 Cr App Rep 83. In the following cases appeals were allowed on the ground that the wrong judgment had been given on the findings of the jury: *R v Rutter* (1908), 1 Cr App Rep 174, *R v Knight* (1908), 1 Cr App Rep 186, *R v Murrehead* (1908), 1 Cr App Rep 189. In the following cases fresh evidence was heard by the Court of Criminal Appeal and the appeals were allowed: *R v Ians* (1908), 1 Cr App Rep 6, *R v Beldridge* (1908), 1 Cr App Rep 236, *R v Nicholson* (1909), 2 Cr App Rep 195.

(p) Criminal Appeal Act 1907 (7 Edw 7, c 23), s 4(1). In the following cases an appeal has been allowed on the ground that there was a miscarriage of justice: *R v Coleman* (1908), 1 Cr App Rep 30, *R v H Jones* (1908), 1 Cr App Rep 142, *R v Lee* (1908), 1 Cr App Rep 5, *R v Warner* (1908), 1 Cr App Rep 227, *R v Nicholson*, *supra*, *R v Beauchamp* (1909), 73 J P 223, *R v Keating* (1909), 73 J P 112, *R v Hendry* (1909), 25 T L R 633, compare *R v Nicholls*, *supra*.

(q) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 4(1). Compare the similar language of R S C 1883, Ord 39, r 6, and *Bray v Ford*, [1896] A C 44. See, too, *Makin v A-G for New South Wales*, [1894] A C 57, P C, with reference to an analogous provision in a colonial Act. For instances where the Court of Criminal Appeal have dismissed an appeal on the ground that while there may have been some misdirection or mistake or misapprehension of evidence there had been no substantial miscarriage of justice, see *R v Westcott* (1908), 25 T L R 192, C C A, *R v Hampshire* (1908), 1 Cr App Rep 212, *R v Lovett* (1908), 1 Cr App Rep 111, *R v Green* (1908), 1 Cr App Rep 124, *R v Hunting* (1908), 1 Cr App Rep 177, *R v Meyer* (1908), 1 Cr App Rep 10, *R v Cutting* (1909), 2 Cr App Rep 150. But see *R v Dyson*, [1909] 2 K B 454, *R v Westcott*, *supra*. The court cannot order a new trial, see note (k) on p 433, *ante*.

(a) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 4(2). See *R v Saunders*, [1899] 1 Q B 490.

(b) *Ibid*, s 4(3). See *R v Eldridge*, [1909] 2 K B 24, C C A, where it was held that in spite of the words "by the verdict" in s. 4(3), which are meaningless and must be disregarded in the case of a plea of guilty the court have power to alter a sentence, when an appellant has pleaded guilty. For instances of reduction of sentences by the court under s. 4(3), see *R v Sykes* (1908), 1 Cr App Rep 172, *R v Nuttall* (1908), 1 Cr App Rep 180 (where the

**SECT 1**  
**The Court**  
**of Criminal**  
**Appeal**

Altering the  
 verdict of  
 the jury

If it appears to the court that an appellant was not properly convicted on some count or part of the indictment, but was properly convicted on some other count or part of the indictment, the sentence passed may be affirmed, or another sentence may be passed in substitution for it, if such sentence is warranted by the verdict on the count on which the appellant was properly convicted (c)

Where the jury could on the indictment on which the appellant has been convicted have found him guilty of some other offence (d), and it appears that the jury must have been satisfied of facts which proved him guilty of such other offence, the court, instead of allowing or dismissing the appeal, may substitute for the verdict found by the jury a verdict for such other offence, and may in substitution for the sentence passed pass such a sentence, not more severe than the one passed, as is warranted by law for such other offence (e)

Power of  
 court in  
 case of a  
 special  
 verdict

**837** Where on the conviction of an appellant the jury have found a special verdict, and the Court of Criminal Appeal think that a wrong conclusion has been arrived at by the court below as to the effect of the verdict, the Court of Criminal Appeal, instead of allowing the appeal, may order the proper conclusion to be recorded and pass such sentence in substitution for the sentence passed as is warranted by law (f)

Power  
 to order  
 appellant to  
 be detained  
 as a criminal  
 lunatic

**838** If on any appeal it appears to the court that the appellant was insane at the time the act was done or omission made which is charged against him so as not to be responsible according to law for his actions, the court may quash the sentence passed and order the defendant to be kept in custody as a criminal lunatic (g)

principles that guide the court in reducing sentence were stated), *R v Jones* (1906), 1 Cr App Rep 196, *R v George* (1908), 1 Cr App Rep 168, *R v Hawes* (1908), 1 Cr App Rep 42, *R v Briggs*, [1909] 1 K B 381, *R v Martin* (1908), 1 Cr App Rep 209, *R v Prince* (1908), 1 Cr App Rep 252, *R v Morton* (1908), 1 Cr App Rep 255, *R v Francis* (1908), 1 Cr App Rep 259, *R v Whiteman* (1909), 2 Cr App Rep 10, *R v O'Connell* (1909), 2 Cr App Rep 3, *R v Harrison* (1909), 2 Cr App Rep 94, *R v Bozall* (1909), 2 Cr App Rep 173, *R v Boucher* (1909), 2 Cr App Rep 177, *R v Edwards* (1909), 73 J P 287. In the following cases the severity of the sentence was increased—*R v Mortimer* (1908), 1 Cr App Rep 20, and *R v Hamilton* (1908), 1 Cr App Rep 87. The Court of Criminal Appeal may in passing sentence against an alien add a recommendation as to the making of an expulsion order, and such a recommendation is to have the same effect for the purposes of the Aliens Act, 1905 (5 Edw 7, c 13), s 3, as the certificate and recommendation of the convicting court (see title ALIENS, Vol I, p 323) (Criminal Appeal Act 1907 (7 Edw 7, c 23), s 21)

(c) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 5 (1)

(d) See p 371, ante

(e) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 5 (2). See *R v Cooper* (1908), 1 Cr App Rep 88, *R v Jefferson* (1908), 1 Cr App Rep 95, *R v George* (1908), 1 Cr App Rep 168, *R v Gyles* (1909), 73 J P 72

(f) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 5 (3). See as to conviction being quashed on the ground of a wrong conclusion from findings by a jury, *R v Knight* (1908), 1 Cr App Rep 186, *R v Muirhead* (1908), 1 Cr App Rep 189

(g) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 5 (4). The defendant is to be kept in custody in the same manner as if a special verdict had been found by the jury under the Trial of Lunatics Act, 1883 (46 & 47 Vict c 38),

**839** If a court of assize or court of quarter sessions makes an order (h) ordering the parent or guardian of a child or young person to pay a fine, damages, or costs in respect of an offence committed by such child or young person, the parent or guardian may appeal against the order to the Court of Criminal Appeal, as if the parent or guardian had been convicted on indictment and the order were a sentence passed on his conviction (i)

SECT. 1  
The Court  
of Criminal  
Appeal

Appeal  
against order  
on parent  
for offence  
committed  
by child  
Suspension of  
order for  
restitution  
of property.

**840** The operation of an order made for the restitution of any property to any person made on a conviction on indictment and the operation of the statutory provisions (j) as to the revesting of the property in stolen goods on conviction are (unless the court before which the conviction takes place directs to the contrary in a case in which in their opinion the title to the property is not in dispute) suspended (1) in any case until the expiration of ten days after the date of conviction, and (2) where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal (k)

Where the operation of such order or of such statutory provisions is suspended until the determination of the appeal, the order is not to take effect as to the property, if the conviction is quashed on appeal. The court may annul or vary such an order, although the conviction is not quashed (k)

Order not  
to take effect  
if conviction  
quashed

## SECT. 2—Procedure

**841** If a person convicted desires to appeal to the Court of Criminal Appeal or to obtain the leave of that court to appeal, he must within ten days of the date of conviction give notice of appeal in writing to the registrar of the Court of Criminal Appeal (l)

Notice of  
appeal

s 2, see pp 212, 373, *ante*. For an instance of a sentence being quashed under this section, see *R v Jefferson* (1908), 1 Cr App Rep 96, compare *R v Harding* (1908), 1 Cr App Rep 219, *R v Macdonald* (1908), 1 Cr App Rep 262

(h) See Children Act, 1908 (8 Edw 7, c 67), s 99(1)

(i) *Ibid*, s 99 (6) (b)

(j) *I.e.*, under Sale of Goods Act, 1893 (56 & 57 Vict c 71), s 24

(k) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 8. The Act does not enable anyone to appeal against the order (*R v Elliott* (1908), 1 Cr App Rep 15)

(l) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 7(1), Criminal Appeal Rules, 1908, r 4. For form of notice of appeal, see schedule to these Rules, Forms 4, 5, of notice of application for leave to appeal, *ibid*, Forms 6, 7. The notice must be signed by the appellant (r 4 (a)), if the appellant cannot write, he may affix his mark in the presence of a witness, who is to attest the affixing of the mark (r 4 (c)). If it is contended that the appellant was not responsible for his actions on the ground of insanity, the notice may be given and signed by his solicitor or other person authorised to act in his behalf (r 4 (d)). If the appellant is a body corporate, the notice may be signed by the secretary, clerk, manager, or solicitor of the body corporate (r 4 (e)). All notices required under the Act and the rules made under the Act are to be addressed to "The Registrar of the Court of Criminal Appeal, London" (r 4 (a)), and are deemed to be duly given or sent, if forwarded by registered post addressed to the person to whom the notice is authorised or required to be given or sent (r 4 (b)). The court will give leave to amend the notice of appeal, so that the real point at issue may be raised (*R v Meade* (1909), 2 Cr App Rep 47, *R v Wulburn* (1909), 2 Cr App Rep 153). The

**SECT 2**  
**Procedure**

The time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Criminal Appeal, except in the case of a conviction involving sentence of death (*m*)

**Suspension  
of execution  
of sentence**

**842** If the appellant has been sentenced to death or corporal punishment, the sentence is not to be executed, until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given. If notice is given within such time, the appeal or application is to be heard and determined with as much expedition as practicable, and the sentence is not to be executed until after the determination of the appeal, or, where an application for leave to appeal is finally refused, until after such refusal (*n*)

**Bail.**

In the case of an appeal under the Act or under the Crown Cases Act, 1818 (*o*), an appellant may be admitted to bail by the court that tried him, if he has not been so admitted, he may after giving notice of appeal be admitted to bail by the Court of Criminal Appeal (*p*)

If he is not admitted to bail, he is, pending the determination of his appeal, to be treated in such manner as may be directed by prison rules made by the Secretary of State (*q*)

**Judge's notes  
and report on  
the case**

**843** In the case of an appeal or of an application for leave to appeal the judge or chairman of the court before whom an appellant was convicted must furnish to the registrar of the Court of Criminal Appeal, when required to do so by such registrar, his notes of the trial and a report giving his opinion upon the case or upon any point arising in the case (*r*)

**Production of  
documents**

**844** The Court of Criminal Appeal may order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case (*s*)

**Order for  
examination  
of**

**845** The court may order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the

appellant may submit his case in writing for the consideration of the court, instead of by oral argument

(*m*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 7(1) Notice of application for extension of time must be signed and addressed in the same way as the notice of appeal (Criminal Appeal Rules, 1908, r 4) For forms of notice of application for extension of time, see schedule to Rules, Form 9

(*n*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 7(2) As to notification of appeals and the result of appeals by the registrar, see Criminal Appeal Rules, 1908, rr 34, 35 and schedule to Rules, Forms 29—32

(*o*) 11 & 12 Vict c 78, see p 413, *ante*

(*p*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), ss 14(2), 17, Criminal Appeal Rules 1908, r 29; and see *R v Ridley* (1909), 25 T L R 508, C C A.

(*q*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 14(1) See Rules of Secretary of State of 8th April, 1908 (Statutory Rules and Orders, 1908, p 772), and *R v Ridley*, *supra*, *R v Gylee* (1909), 73 J P 72

(*r*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 6, Criminal Appeal Rules, 1908, rr 14—16

(*s*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 9(a)

court, or may order the examination of any such witnesses to be conducted in manner provided by rules of court before any judge of the court or before any officer of the court or justice of the peace or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court (t).

SECT 3  
Procedure.  
—  
compellable  
witnesses.

The court may, if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant in cases where such evidence could not have been given at the trial except on such application (u).

**846** If any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation which cannot in the opinion of the court conveniently be conducted before the court, the court may order the reference of such question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the court and act upon the report of any such commissioner so far as they think fit to adopt it (v).

Reference of  
questions to  
special  
commis-  
sioner.

**847** The court may also appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case (w).

Appointment  
of assessor

**848** The court may exercise in relation to the proceedings any other powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters, and may issue any warrants necessary for enforcing the orders of the court (u).

Other powers.

(t) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 9 (b), Criminal Appeal Rules, 1908, rr 40, 41, schedule to Rules, Forms 24—27 Applications for leave to call fresh evidence were granted in the following cases —*R v Lums* (1908), 1 Cr App Rep 6, *R v Betridge* (1908), 1 Cr App Rep 236, *R v Farrington* (1908), 1 Cr App Rep 113, *R v Ilwson* (1908), 1 Cr App Rep 47, *R v Samuel* (1908), 1 Cr App Rep 84, *R v Lovett* (1908), 1 Cr App Rep 94, *R v Gerhold* (1908), 1 Cr App Rep 104, *R v Osborne* (1908), 1 Cr App Rep 133, *R v Gray* (1908), 1 Cr App Rep 154, *R v Goukett* (1908), 1 Cr App Rep 204, *R v Martin* (1908), 1 Cr App Rep 33, *R v East* (1908), 1 Cr App Rep 183, *R v Duntun* (1908), 1 Cr App Rep 165, *R v Donovan* (1909) 2 Cr App Rep 1, 17, *R v Dickinson* (1909) 2 Cr App Rep 78, *R v Jones* (1909), 2 Cr App Rep 88, *R v Malvis* (1909), 2 Cr App Rep 192, *R v Williams* (1909), 2 Cr App Rep 156 Leave will not be granted, unless very good reason is given for not calling the witnesses at the trial (*R v Mortimer* (1908), 1 Cr App Rep 22, *R v Martin*, *supra*, *R v McGilgynchie* (1909) 2 Cr App Rep 183, *R v Mack* (1909), 2 Cr App Rep 114, *R v Perry* (1909), 2 Cr App Rep 89, but see *R v Atkins* (1908), 1 Cr App Rep 45, *R v Bradley* (1909), 2 Cr App Rep 124, *R v Malvis*, *supra*, *R v Donovan*, *supra*).

(u) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 9 (c) In the absence of special circumstances the court will not grant leave to the appellant to give evidence, if he did not give evidence at the trial (*R v Rubens* (1909), 2 Cr App Rep 163, 167).

(v) *Ibid.*, s 9 (d), Criminal Appeal Rules, 1908, r 41

(w) Criminal Appeal Act 1907 (7 Edw 7, c 23), s 9 (e)

(a) *Ibid.*, s 9, R S O, 1883, Ord 59, r 4 See title PRACTICE AND PROCEDURE

**SECT. 2**  
**Procedure**

Sentence  
not to be  
increased in  
consequence  
of fresh  
evidence  
Assigning  
solicitor or  
counsel

Presence of  
appellant  
at hearing  
of appeal

Director of  
Public  
Prosecutions  
to undertake  
defence of  
appeals.

**849** In no case is any sentence to be increased by reason of or in consideration of any evidence that was not given at the trial (*b*)

**850** The Court of Criminal Appeal may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal, if in the opinion of the court it is desirable in the interests of justice, and if the appellant has not sufficient means to enable him to instruct solicitor or counsel (*c*)

**851** An appellant, although he is in custody, is, if he desires it, entitled to be present on the hearing of his appeal, but not when the appeal is on a question of law alone or on an application for leave to appeal, or on any proceedings preliminary or incidental to an appeal, except where rules of court provide that he shall have the right to be present and the court give him leave to be present (*d*)

The court may pass any sentence which they are authorised to pass, although the appellant is not present (*e*)

**852** It is the duty of the Director of Public Prosecutions to appear for the Crown on every appeal under the Act, except where the solicitor of a Government department or a private prosecutor in the case of a private prosecution undertakes the defence of the appeal (*f*)

(*b*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 9

(*c*) *Ibid.*, s 10, and see s 15 (3), and Criminal Appeal Rules, 1908, rr 30-37, and 38. On an appeal against sentence legal aid will only be granted in exceptional cases (*R v Crawley* (1906), 1 Cr App Rep 4, *R v Peters* (1908), 1 Cr App Rep 131). As to costs and expenses, see p 118, *post*.

(*d*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 11 (1), Criminal Appeal Rules, 1908, r 25, schedule to Rules, Forms 4, 5, 13-14. In *R v Dunleavy*, [1909] 1 K B 200, the court refused, in the absence of the prisoner through illness, to proceed with the hearing of an appeal involving questions of fact at which the appellant had desired to be present, *semble*, the prisoner's counsel cannot waive the prisoner's right to be present (*ibid.*)

(*e*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 11 (2)

(*f*) *Ibid.* s 12, Criminal Appeal Rules, 1908, rr 27, 28, schedule to Rules, Form 2. The Prosecution of Offences Act, 1879 (42 & 43 Vict c 22), is to apply as though the duty of the Director of Public Prosecutions under the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 12, were a duty under the Prosecution of Offences Act, 1879 (42 & 43 Vict c 22), s 2 (Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 12). Provision is to be made by rules of court for the transmission to him of all such documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties under the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 12. As to hearing counsel for the Crown on appeal against sentence, see *R v Standing* (1909), 2 Cr App Rep 5. As to costs, see p 118 *post*. See also Order of the Secretary of State of 27th March, 1908, [1908] W N p 95, Order of the Secretary of State of 14th June, 1904 (Statutory Rules and Orders, 1904, pp 117-122). Criminal Appeal Rules, 1908, r 49, schedule to Rules, Form 28. Provision is to be made by rules within the meaning of the Prison Act, 1898 (61 & 62 Vict c 41), for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of the Criminal Appeal Act, 1907 (7 Edw 7, c 23), or to any place to which the Court of Criminal Appeal, or any judge of that court, may order him to

**853** If an appeal has been dismissed, and the appellant was admitted to bail pending the determination of his appeal, the time during which he was admitted to bail is not to count as part of any term of imprisonment or penal servitude under his sentence (g).

SECT. 2.  
Procedure.

Computation  
of term of  
sentence if  
appeal dis-  
missed.

If he is in custody and is specially treated as an appellant, the time during which he is so specially treated is not, unless the Court of Criminal Appeal otherwise order, to count as part of such term (g)

The term of imprisonment or penal servitude to which he is sentenced, either under the original sentence of the court below or under any substituted sentence of the Court of Criminal Appeal, is, unless that court otherwise order, to be deemed to be resumed or to run, if he is in custody, from the day on which the appeal is determined, and if he is not in custody, from the day on which he is received into prison under the sentence. Any time during which he was in custody and was not specially treated as an appellant is to count as a part of the term of imprisonment or penal servitude under the sentence (g)

**854** The registrar must take all necessary steps for obtaining a hearing of any appeals or applications notice of which is given to him under the Act, and must obtain and lay before the court in proper form all documents and exhibits and other things relating to the proceedings in the court before which the appellant was tried which appear necessary for the proper determination of any such appeal or application (h)

Duties of  
registrar

If any notice of appeal purporting to be on a ground which involves a question of law alone appears to the registrar not to show any substantial ground of appeal, he may refer the appeal to the court for summary determination, and thereupon, if the court consider that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, the court may dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown (i)

Summary  
determination  
of frivolous  
or vexatious  
appeals

be taken for the purpose of any proceedings of that court, and for the manner in which he is to be kept in custody while absent from prison for the purpose, an appellant while in custody in accordance with those rules is to be deemed to be in legal custody (Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 14 (c))

(g) Criminal Appeal Act, 1907 (7 Edw 7 c 23), s 14 (3). If a case is stated under the Crown Cases Act, 1848 (11 & 12 Vict c 78) (see p 433, ante), the person in relation to whose conviction the case is stated is to be treated as regards custody and term of imprisonment or penal servitude in the same way as an appellant under the Criminal Appeal Act, 1907 (see *ibid*, s 14 (4)). See, as to the date from which a sentence may be ordered to run, *R v Siddons* (1908), 1 Cr App Rep 28, *R v Boyd* (1908), 1 Cr App Rep 64, *R v Gulton* (1908), 1 Cr App Rep 165, *R v Handles* (1908), 1 Cr App Rep 194, *R v East* (1908), 1 Cr App Rep 205, *R v Hampshire* (1908), 1 Cr App Rep 212, *R v Gray* (1908), 1 Cr App Rep 225, *R v Dyer* (1909), 2 Cr App Rep 174, *R v Gyles* (1909), 73 J P 72

(h) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 15 (1), Criminal Appeal Rules, 1908, rr 2, 25, 32, 83. As to copies of documents for the use of an appellant or respondent, see *ibid*, r 39

(i) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 15 (2). For an instance of a summary determination of an appeal under this sub section, see *R. v Rye* (1909), 2 Cr App Rep 155

## SECT. 2.

## Procedure

## Custody of documents

**855** Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment who, if convicted, is entitled or may be authorised to appeal, are to be kept in the custody of the court of trial, in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents etc from that custody (*l*)

## Forms to be furnished by registrar

**856.** The registrar must furnish the necessary forms and instructions in relation to notices of appeal and application under the Act to any person who demands them, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit (*l*)

The governor of a prison must cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application to the court, and cause any such notice given by a prisoner in his custody to be forwarded to the registrar (*l*)

## Report of registrar as to assigning legal aid to appellant

The registrar must report to a judge of the court any case in which it appears to him that a solicitor and counsel, or counsel only, ought to be assigned to an appellant, although no application has been made for the purpose (*m*)

## Shorthand notes.

**857** Shorthand notes are to be taken of the proceedings at the trial on indictment of any person who, if convicted, is entitled or may be authorised to appeal under the Act, and on any appeal or application for leave to appeal a transcript of the notes, or any part of such notes, is to be made, if the registrar so directs, and to be furnished to the registrar for the use of the court, and a transcript is to be furnished to any party interested upon the payment of such charges as the Treasury may fix (*n*)

## Powers exercisable by a single judge

**858** Any judge of the Court of Criminal Appeal may exercise the powers given to the court to give leave to appeal, or to grant

(*c*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 15 (3), Criminal Appeal Rules, 1908, r 8, 33, 36

(*l*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 15 (4), Criminal Appeal Rules, 1908, r 25, schedule to Rules, Forms 4—7, 9, 14, 26

(*m*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 15 (5), Criminal Appeal Rules, 1908, r 37.

(*n*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 16 (1). As to a transcript for the use of the Secretary of State, see *ibid*, s 16 (2), as to costs of taking shorthand notes and of a transcript, see *ibid*, s 16 (3), Criminal Appeal Rules, 1908, r 5. Shorthand notes are to be taken of the evidence at the trial, of any objections taken in the course of the trial, of any statement made by the prisoner, of the summing-up and sentence of the judge, but, unless the judge at the trial otherwise orders, not of any part of the speeches of counsel or solicitor (Criminal Appeal Rules, 1908, r 52, see [1908] W N 94). The provision in s 16 as to shorthand notes is merely directory, and the taking of such notes or of sufficient notes is not essential to the validity of the proceedings (*R v Rutter* (1908), 1 Cr App Rep 174; *R v Elliott* (1909), 2 Cr App Rep 171). In *R v Bennett* (1909), 2 Cr App Rep 182, when there were no shorthand notes, the court accepted instead the statement of counsel for the appellant, who was present at the trial. In the case of a discrepancy between the judge's notes and the shorthand notes, the court will prefer the judge's notes (*R v Beauchamp* (1909), 2 Cr App Rep. 40)



extension of time for notice of appeal, or for application for leave to appeal, or to assign legal aid to an appellant, or to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, or to admit an appellant to bail (o)

SECT 3  
Procedure.

If a judge of the court refuses any application of an appellant, the appellant may have the application determined by the full court of not less than three judges (o)

**859** The Act does not affect the prerogative of mercy, but the Secretary of State, on the consideration of any petition for the exercise of such prerogative with reference to the conviction of a person on indictment or to the sentence (other than sentence of death) passed on a person so convicted, may at any time refer the whole case to the court, and the case is then to be heard and determined by the court as in the case of an appeal by a person convicted, or the Secretary of State may refer any point arising in such a case to the court for their opinion, and the court are to consider the point so referred and furnish the Secretary of State with their opinion (p)

References  
to the Court  
by Secretary  
of State.

**860** The Act applies to convictions on criminal informations and coroners' inquisitions, and to orders made by a court of quarter sessions in respect of an incorrigible rogue, in the same way as the Act applies to convictions on indictments (q)

Convictions to  
which the Act  
applies.

The Act does not apply to convictions on indictments or inquisitions charging any peer or peeress, or other person claiming the privilege of peerage, with any offence not triable by a court of assize (a)

(o) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 17, Criminal Appeal Rules, 1908, rr 25, 42 (b), a single judge may refer applications to the full court, see *R v Munns* (1908), 1 Cr App Rep 4 at p 5. As to notice of application for bail, see *R v Ridley* (1909), 25 T L R 508, C C A.

(p) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 19, Criminal Appeal Rules, 1908, rr 48, 51. The power which s 19 of the Act gives to the Secretary of State of referring either "the whole case" or any "point arising in the case" to the court, and the power of the court to hear and determine the whole case or to consider any point so referred and to furnish their opinions to the Secretary of State are limited to convictions on indictment, but in *R v Johnson* [1909], 1 K B 439, C C A, the Secretary of State referred to the court under s 19 (a) a conviction not on indictment, and the court heard and determined the case and quashed the sentence, though they were bound to hold that, while the conviction was wrong, they had in that particular case no power to deal with the conviction. If the Secretary of State refers a point to the court for their opinion, the court, unless they otherwise determine, are to consider the point in private (Criminal Appeal Rules, 1908, r 51).

(q) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (2). See the Vagrancy Act, 1824 (5 Geo 4, c 83), s 5. No appeal under the Act lies from the conviction of an incorrigible rogue at petty sessions, the only appeal is against the sentence passed at quarter sessions (*R v Brown* (1908), 1 Cr App Rep 85, *R v O'Brien* (1909), 2 Cr App Rep 193, *R v Edwards* (1909), 2 Cr App Rep. 79). In one case an order made at quarter sessions on a conviction at petty sessions was referred to the court under s 19 of the Act (*R v Johnson* (1909), 2 Cr App Rep 13), and the court heard and determined the case, *sed quare* (see note (p)).

(a) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s. 20 (2). As to indictments etc. against peers etc., see p 266, *ante*.

## SECT 2

## Procedure

Indictments  
for non repair  
etc of high-  
ways.

An appeal to the Court of Criminal Appeal does not lie in the case of convictions on indictments at common law in relation to the non-repair or obstruction of a highway, public bridge, or navigable river. An appeal from such a conviction lies in all respects as if the conviction were a verdict in a civil action tried at assizes (b).

SECT 3—*Pardon.*

Royal  
pardon

**861** The royal prerogative of mercy may be exercised irrespectively of any appeal and after the failure of an appeal to the court (c). Any punishment for any crime may, except where a statute otherwise expressly provides (d), be remitted by the Sovereign, and any crime punishable by criminal process in England may be pardoned by him at any time both after and before judgment (e).

Besides a royal pardon under the Great Seal or under the sign manual there may be a pardon by an Act of Parliament (f).

(b) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 20 (3). See addition to r 17 of the Crown Office Rules, 1906, [1908] W N p 165. An appeal from such a conviction is to be set down and entered at the Crown Office, and if the indictment has not already been removed into the King's Bench Division for the purpose of trial, a writ of *certiorari* is to issue on the setting down of the appeal to remove the indictment into the King's Bench Division for the purpose of appeal to the Court of Appeal without any order or recognisance (*ibid*).

(c) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 19.

(d) See Habeas Corpus Act, 1679 (31 Car 2, c 2), s 11, which provides that anyone who commits, detains etc any person contrary to the Act is to suffer the penalties of *perjurium* and is to be disallowed from bearing any office of trust in England and incapable of any pardon from the King in respect of such forfeitures and disabilities.

(e) For pardon, generally, see title CONSTITUTIONAL LAW, Vol VI, p 404.

(f) See *R v Crosby* (1695), 12 State Tr 1291, *R v Rookwood* (1696), 13 State Tr 180. As to the effect of a colonial Act of Indemnity, see *Phillips v Eyre* (1868), L R 1 Q B 225, (1870), L R 6 Q B 1, Ex Ch.

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## Part IX.—Costs, Compensation, and Rewards.

### SECT 1—Order for Costs.

#### SECT 1 Order for Costs

**862** The payment of costs in criminal proceedings, except when an indictment has been removed by *certiorari*, depends entirely upon statute, and is governed by the Costs in Criminal Cases Act, 1908

Costs in  
Criminal  
Cases Act,  
1908

Payment of  
costs of pro-  
secution or  
defence out of  
local funds

**863** A court of assize or court of quarter sessions before which any indictable offence (except an offence in relation to the non-repair or obstruction of any highway, public bridge, or navigable river) is prosecuted or tried may direct the payment of the costs of the prosecution or defence or both out of the funds of a county borough, if the offence is committed or supposed to have been committed in a county borough, and in other cases out of the county fund of the administrative county in which the offence was committed or was supposed to have been committed (*g*)

**864** The amount of costs the payment of which the court can order is, subject to the regulations made by the Secretary of State (*h*), such an amount as appears to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to such attendance and giving of evidence (*i*)

Amount of  
costs

(*g*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 1, 4, 9 (*i*) As to county boroughs and administrative counties, see title LOCAL GOVERNMENT The costs ordered under this Act with regard to offences committed within the jurisdiction of the Admiralty of England (see p 273, *ante*) are to be paid out of the funds of the county or county borough where the defendant is tried, and if he is tried at the Central Criminal Court, out of the funds of the county of London, but any costs paid in such cases out of the funds of a county or county borough are to be repaid out of moneys provided by Parliament (*ibid*, s 4 (*i*)) In prosecutions relating to the non-repair or obstruction of any highway, public bridge, or navigable river costs may be allowed as in civil proceedings, as if the prosecutor or defendant were plaintiff or defendant in such proceedings (Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (*3*)) The effect of this is that in all such cases where the jury give a verdict, costs follow the verdict, unless the judge who tries the case shall for good cause otherwise order (R S C, 1883, Ord 65, r 1) As to costs in proceedings before justices, see Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 1 (*1*) (*b*), and title MAGISTRATES

(*h*) As to the making of such regulations, see Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 5, and for the regulations see [1908] W N, Part II, p 343, and [1909] W N, Part II, p 3

(*i*) *Ibid*, s 1 (*2*) The costs which may be ordered in the case of the prosecutor will include the costs of solicitor and counsel Such costs cannot, it seems, be allowed in the case of the defence, except where the defendant has obtained a certificate for legal aid under the Poor Prisoners Defence Act, 1902 (3 Edw 7, c 38) In such a case the costs of the defence which may be ordered to be paid include the fees of solicitor and counsel, the costs of the depositions, and any other expenses properly incurred in carrying on the defence (Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 1 (*3*)) In other cases the costs

**SECT. 1**  
**Order for**  
**Costs**

Ascertain-  
ment of  
amount  
Order for  
payment

The amount of costs directed to be paid must be ascertained as soon as practicable by the proper officer of the court, and as soon as the amount is ascertained the proper officer is to make out and deliver to the person in whose favour the order has been made, or to any person who appears to the proper officer to be acting on behalf of that person, an order upon the treasurer of the county or borough out of the funds of which the costs are payable for the payment of that amount (a)

Payment

**865** The treasurer of any county or county borough on whom such order is made must upon sight of the order pay out of the county fund or borough fund or rate to the person named in the order or his duly authorised agent the sums specified in the order, and must be allowed such sums in his accounts (b)

Attendance  
of treasurer  
of county  
council or  
county  
borough

For the purpose of the payment of such sums the council of every county and of every county borough must cause their treasurer, or some other person on his behalf, to attend at every court of assize or quarter sessions at which any indictable offence is to be tried in respect of which an order as to costs can be made on the treasurer, and to remain in attendance for that purpose during the sitting of the court, or until such hour as the court shall direct (c)

Regulations  
of Secretary  
of State

**866** A Secretary of State may make regulations generally for carrying the Act (d) into effect, and in particular with respect to the rates or scales of payment of any costs which are payable out of local funds and the conditions under which any such costs may be allowed, the manner in which an officer of the court making any payment on account of costs to any person in respect of his attendance to give evidence is to be reimbursed out of local funds, and the form of orders, certificates and notices under the Act, and the furnishing of information, when certificates are forwarded by officers of courts of summary jurisdiction or of examining justices (e)

Order on  
convicted  
person to  
pay costs

**867** The court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any

payable to the defence seem to be limited to the expenses of witnesses (*ibid*, s 1 (2)). Expenses of witnesses to character, whether for the prosecution or the defence are not allowed at a court of assize or quarter sessions, unless the court shall otherwise order (Costs in Criminal Cases Act, 1905 (8 Edw 7, c 15), s 1 (4)). The examining justices (see p 328, *ante*) may as regards the preliminary investigation of an indictable offence direct the payment of the costs of the prosecution or defence, or both, out of the funds of the county or borough in the same way as a court of assize or quarter sessions (*ibid*, ss 1, 3).

(a) *Ibid*, s 1 (2), 2 The order of a court of assize or quarter sessions is to include the amount of costs directed to be paid by the examining justices, and certified by them, in respect of the proceedings before them (*ibid*, s 3) The proper officer is the clerk of the peace in the case of quarter sessions or the clerk of assize in the case of assizes, or a deputy of either

(b) *Ibid*, s 4 (2)

(c) *Ibid*, s 4 (3) As to adjustment of financial relations between any counties and boroughs, when any change is brought about by the Act, see s 4 (4)

(d) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15)

(e) *Ibid*, s 5 Regulations have been made See [1908] W N, Part II. p 313; [1909] W N, Part II, p 3

other punishment order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the examining justices, as taxed by the proper officer of the court (*f*)

# SECT. 1. Order for Costs

**868** In certain cases (*g*), when a person has been acquitted on an indictment or information by a private prosecutor, the court before which the person acquitted is tried may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the examining justices, as taxed by the proper officer of the court

Order that  
prosecution  
shall pay  
costs of  
person  
acquitted.

An order for the payment of costs by the person convicted or the prosecutor may be made in addition to an order directing payment of costs out of local funds

**869** Where an order directing payment out of local funds is made, the costs are primarily payable out of local funds, but notice of any order for the payment of costs by the person convicted or by the prosecutor must be sent to the council of the county or borough out of the funds of which the costs are primarily payable (*h*). Such an order may be enforced by the council of the county or borough out of the funds of which the costs have been paid in the same manner as an order for the payment of costs made by the High Court in civil proceedings (*i*), or as a civil debt before a court of summary jurisdiction (*k*)

Enforcement  
of order for  
payment of  
costs.

(*f*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 6 (1)

(*g*) *Ibid*, s 6 (2) Such an order can only be made where (1) a person is acquitted on an indictment or information by a private prosecutor (a) for publication of a defamatory libel, (b) for any offence against the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict c 102), (c) or any corrupt practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict c 51), (d) for an offence under the Merchandise Marks Acts, 1867—1894 (50 & 51 Vict c 28, 54 & 55 Vict c 15, 57 & 58 Vict c 11), or (2) on an indictment presented to a grand jury under the Vexatious Indictments Act, 1859 (22 & 23 Vict c 17), where the person acquitted has not been committed to or detained in custody or bound by recognizance to answer the indictment. If a person is charged with an indictable offence and the justices, acting under the Indictable Offences Act, 1848 (11 & 12 Vict c 42), dismiss the charge, and they are of opinion that the charge was not made in good faith, they may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, if the amount ordered to be paid by such justices exceeds £25, the prosecutor may appeal against the order to a court of quarter sessions in the manner provided by the Summary Jurisdiction Acts (11 & 12 Vict c 43, 42 & 43 Vict c 49, 47 & 48 Vict c 43) (see title MAGISTRATES), and no proceedings are to be taken upon the order, until either the time within which the appeal can be made has elapsed without an appeal being made or, if an appeal is made, until the appeal is determined or abandoned (Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 6 (3)). If a person has been committed for trial for an indictable offence, or a prosecutor has been bound over to prosecute under the Vexatious Indictments Act, 1859 (22 & 23 Vict c 17), and the person is not ultimately tried, the court to which he is committed, or at which the prosecutor is bound over to prosecute, may order payment of costs as if he had been tried and acquitted (Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), ss 7, 9 (2)).

(*h*) *Ibid*, s 6 (4)

(*i*) See R S C, 1883, Ord 42, rr 3, 4, and title PRACTICE AND PROCEDURE.

(*k*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 6 (5) See title MAGISTRATES

**SECT 1**  
**Order for**  
**Costs**

The person to whom the costs have been ordered to be paid by the prosecutor or defendant may recover them in the same manner (*l*)

If a person who is convicted has been ordered to pay costs, the order may be enforced out of any money taken from him on his apprehension, so far as the court so directs (*l*)

**Costs in**  
**case of an**  
**incorrigible**  
**rogue**

**870** The foregoing provisions with regard to the payment of costs in criminal cases apply to the case of a person committed as an incorrigible rogue (*m*), as though such person were committed for trial for an indictable offence (*n*). In the case of an appeal by such person to quarter sessions (*o*) such provisions apply as though the hearing of the appeal were the trial of an indictable offence (*p*)

**Costs in the**  
**Court of**  
**Criminal**  
**Appeal**  
**Hearing of**  
**case stated**

**871** On the hearing of an appeal to the Court of Criminal Appeal no costs are to be allowed on either side (*q*)

The hearing by the Court of Criminal Appeal of a case stated (*r*) is to be deemed, so far as relates to costs, to be the hearing of an appeal (*s*). The court of assize or quarter sessions which states a case (*a*) has no power to direct that the costs of the hearing of the case before the Court of Appeal shall be paid out of local funds (*b*)

**Expenses of**  
**solicitor and**  
**counsel**  
**assigned to**  
**prisoner who**  
**appeals, and**  
**of witnesses**  
**examined on**  
**appeal**

**872** The "expenses" of solicitor and counsel assigned to an appellant under the Criminal Appeal Act, 1907 (*c*), and of any witnesses who attend on the order of the court, or who are examined in any proceedings incidental to the appeal and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the court for the purpose, are to be defrayed up to an amount allowed by the Court of Criminal Appeal out of the county or county borough funds in the same way as the costs of a prosecution (*d*)

(*l*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 6 (5). If the person convicted becomes bankrupt after his apprehension, but before his conviction, an order under this section is valid notwithstanding the bankruptcy, provided no act of bankruptcy was committed before the apprehension (*R v Roberts* (1873), L R 9 Q. B. 77)

(*m*) Under the Vagrancy Act, 1824 (5 Geo 4, c 83), s 5

(*n*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (4).

(*o*) Under the Vagrancy Act, 1824 (5 Geo 4, c 83), s 14

(*p*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (4)

(*q*) Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 13 (1)

(*r*) Under the Crown Cases Act, 1848 (11 & 12 Vict c 78)

(*s*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (5)

(*a*) Under the Crown Cases Act, 1848 (11 & 12 Vict c 78)

Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (5)

7 Edw 7, c 23

Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 13 (2), Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (5). The expenses of the examination of witnesses by a person appointed by the court for that purpose, and of a reference to a special commissioner, and of an assessor under the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 9 (b), (d), (e), are provided for in the same way (*ibid*, s. 13 (2))

The payment of such expenses of an appellant does not depend on any order of the court, but is subject to taxation (*e*)

There is no provision as to the payment of the costs or expenses of a respondent in an appeal to the Court of Criminal Appeal

The foregoing provisions as to the payment of costs in criminal cases out of local funds are substituted for all other statutory provisions for the payment of expenses in the case of any indictment for felony or for misdemeanour (*f*)

# SECT. 1.

## Order for Costs

Provisions of costs in Criminal Cases Act supersede all other statutory provisions as to costs.

## SECT. 2 — Compensation and Rewards

**873** If any person has been convicted of felony, the court before which he is tried may upon the application of any person aggrieved and immediately after the conviction award any sum of money, not exceeding £100, to be paid by the convicted felon by way of satisfaction or compensation for any loss of property suffered through or by means of the felony (*g*)

Order for compensation of person injured by a felony

**874** In the case of certain offences (*h*) an order may be made on the sheriff of the county for the payment of sums of money to the person or persons who shall appear to the court to have been active in the apprehension of the offender charged, the sum is to be such as to the court seems reasonable and sufficient to compensate such person for his expenses, exertions, and loss of time in or towards such apprehension (*i*)

Order for payment of rewards to persons who have been active in the apprehension of offenders.

**875** If a man is killed in endeavouring to apprehend any person charged with any of such offences, the court before whom the person charged is tried may order the sheriff of the county to pay to the widow of the man, if he leaves a widow, or to his child or children, if his wife is dead, or if he leaves neither widow nor child, to his father or mother, such sum of money as to the court may seem meet (*k*)

Compensation to relatives

(*e*) Criminal Appeal Act, 1907 (7 Edw 7, c 23, s 13 (2))

(*f*) Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), s 9 (6)

(*g*) Forfeiture Act, 1870 (33 & 34 Vict c 23), s 4 The order is enforced in the same way as an order for costs under the Costs in Criminal Cases Act, 1908 (8 Edw 7, c 15), see *ibid*, s 9 (6), and schedule repealing s 3 of the Forfeiture Act, 1870

(*h*) Murder, felonious shooting or attempting to discharge loaded firearms, stabbing, cutting, poisoning, administering anything to procure miscarriage, rape, burglary, housebreaking, robbery on the person horse stealing, bullock-stealing, sheep stealing, being accessory before the fact to any of these offences, receiving stolen property (Criminal Law Act, 1828 (7 Geo 4, c 64), s 2b)

(*i*) *Ibid* The compensation is to be in addition to the costs allowed such persons as witnesses The orders may be made by a court of oyer and terminer or of general gaol delivery, and by a court of quarter sessions in respect of offences which that court has power to try, but a court of quarter sessions cannot award a larger sum than £5 for compensation to any one person (Criminal Justice Administration Act, 1851 (14 & 15 Vict c 55), s 8) The sum ordered is paid by the sheriff, who is afterwards recouped by the Treasury (Criminal Law Act, 1828 (7 Geo 4, c 64), s 29)

(*k*) Criminal Law Act, 1826 (7 Geo 4, c 64), s 30 The sheriff is to pay the sum ordered and to be recouped by the Treasury (*ibid*)

## Part X.—Offences against the Government.

### SECT 1

#### Offences against the Sovereign

Acts that  
constitute  
high treason

### SECT 1 — *Offences against the Sovereign*

#### SUB-SECT 1 — *High Treason*

**876** Every person is by statute guilty of high treason who (*l*) —

(1) Compasses or imagines the death, or any bodily harm tending to the death, maiming or wounding, imprisonment or restraint of the King, or the death of the Queen Consort, or of their eldest son and heir (*m*)

(2) Violates the Queen Consort or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir (*n*)

(3) Levies war against the King in his realm, or is adherent to the King's enemies in his realm, or gives them aid or comfort in the realm or elsewhere (*o*)

(4) Slays the Chancellor, Treasurer, or the judges of the High Court of Justice, or justices of assize or of oyer and terminer, being in their places and doing their offices (*p*)

(5) Endeavours to deprive or hinder the person next in succession to the Crown under the Act of Settlement (*q*) from succeeding, or, by writing or printing, maintains that any other person is entitled to the Crown (*r*)

#### Allegiance

**877.** The essence of the offence of treason lies in the violation of the allegiance which is owed to the King. This allegiance is owed not only by subjects of the King, but also by an alien living in this country and receiving the protection of its laws, so long as he is resident here, even if the State to which he belongs is at

(*l*) For treason generally see also title CONSTITUTIONAL LAW, Vol VI, p 345. High treason was so called in contrast to an offence which formerly was called petit treason, namely, —the killing of a master by his servant, of a husband by his wife, of an ecclesiastical person by his inferior (Treason Act, 1351 (25 Edw 3, stat 5, c 2), 4 Bl Com 75, 203). There is now no such offence as petit treason, the offence which formerly amounted to petit treason having been by statute declared to be murder only and no greater offence (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 8).

(*m*) Treason Act, 1351 (25 Edw 3, stat 5, c 2), Treason Act, 1795 (36 Geo 3, c 7), s 1, made perpetual by the Treason Act, 1817 (57 Geo 3, c 6), s 1, see the Treason Felony Act, 1848 (11 & 12 Vict c 12), s 1, and p 457, *post*.

(*n*) Treason Act, 1351 (25 Edw 3, stat 5, c 2). See title CONSTITUTIONAL LAW, Vol VI, p 349.

(*o*) *Ibid*

(*p*) *Ibid*. The Treason Act, 1351 (25 Edw 3, stat 5, c 2), refers to the slaying of "the King's justices of the one bench or the other," i.e., the judges of the King's Bench or the Court of Common Pleas. These are now represented by the judges of the High Court of Justice (King's Bench Division). A doubt has been expressed whether the Act would include judges of the Chancery Division (Stephen, Digest of the Criminal Law, 5th ed, 45). "Chancellor" means Lord High Chancellor, "Treasurer" Lord High Treasurer, but there has been no Lord High Treasurer since 1714, since which date the office has always been in commission (Anson, Law and Customs of the Constitution, Vol II, Part I, 170).

(*q*) Stat (1700) 12 & 13 Will 3, c 2.

(*r*) Stat (1702) 1 Ann, stat 2, c 21, s 3, Succession to the Crown Act, 1707 (6 Ann c 41), s 1. See title CONSTITUTIONAL LAW, Vol VI, p 350.



war with the King (*a*) If an alien has lived in this country under the protection of the law, and the State of which he is a subject invades the King's territory and the alien assists the invader, the alien is guilty of treason (*b*)

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Ambassadors and persons attached to embassies are, it seems, only amenable to the laws of this country for treason if they are subjects of this country (*c*)

Ambassadors

The punishment for treason is death by hanging, but the King may substitute beheading for hanging (*d*)

Punishment.

(1) *Compassing the Death of the King*

**878** The treason of compassing or imagining the death of the King, and, indeed, all treasons, must be proved (*e*) by overt, i.e., open, acts (*f*) It is an overt act of compassing the King's death, within the meaning of the statutes, wilfully and deliberately to do or attempt anything whereby the King's life may be endangered It is therefore an overt act of the treason of compassing the death of the King to enter into measures for deposing or imprisoning him, or to place his person in the power of conspirators against him, or to agree with foreigners to invade his dominions with force, or to go into a foreign country for that end, or to levy or conspire to levy war against him, or to raise an insurrection against him, or to destroy or conspire to destroy the constitution of the country (*g*)

Overt acts.

It is an overt act of treason to meet with others and consult how to kill the King, though no agreement be then come to, or to enter into a treasonable correspondence with the enemy, although the

(*a*) Fost. 185, 1 East, P C 52, Kel 38, *R v De la Motte* (1781), 21 State Tr 687, at p 814 As to allegiance, see title CONSTITUTIONAL LAW, Vol VI, pp 341 *et seq*

(*b*) *De Jager v A G of Natal*, [1907] A C 326, P C

(*c*) Fost 187, 1 Hale, P C 95, 1 Hawk P C 86, 1 Bl Com 253 See *Story's Case* (1571), 3 Dyer, 300, b, 1 State Tr 1087, *R v Owen* (1616), 1 Roll Rep 185 Treatise upon the Law of High Treason by a Barrister at Law (ed 1793), 8 Owing to the fiction of extritoriality an ambassador who is not a subject of the State to which he is accredited does not owe even temporary allegiance to that State

(*d*) Treason Act, 1790 (30 Geo 2, c 48), s 1, Treason Act, 1814 (54 Geo 3, c 140), ss 1, 2, Forfeiture Act, 1870 (33 & 34 Vict c 23), s 1, and see title CONSTITUTIONAL LAW, Vol VI, p 352 As to the disqualifications which follow upon a conviction for treason or felony, see p 428, *ante* Treason is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 39), s 1) As to misprision of treason, see p 503, *post*

(*e*) 3 Co Inst 12 An overt act may consist in any course, act, measure or means whatever done, taken, used or assented to, towards, and for the purpose of effecting a traitorous intention, it includes any act of conspiracy, conferring or consulting with or advising, persuading, counselling, commanding or inciting any person (*per* ALDERSON, B, in his charge to the grand jury at Liverpool Assizes, December, 1848, 6 State Tr (N S) at p 1133) See also p 233 *ante*

(*f*) Treason Act, 1351 (25 Edw 3, stat 5, c 2), Treason Act, 1796 (36 Geo 3, c 7), s 1 See p 456, *post*

(*g*) Fost. 195—197, 210, 1 Hale, P C 108—128, where the more ancient authorities are fully cited, *R v Hardy* (1794), 24 State Tr 201 *R v Friend* (1696), 13 State Tr 1, *R v Charnock* (1696), 12 State Tr 1377, *R v Rookwood* (1696), 13 State Tr 139, *R v Thistlewood* (1820), 33 State Tr (N S) 681, 685

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letters which constitute the correspondence are intercepted and never delivered (*h*)

Writings which import a compassing of the King's death may be alleged as overt acts to support an indictment, provided they are published (*i*)

Loose words, not relative to any act or design, although they may be in contempt of the King's person and may charge him with vicious or foolish conduct, are not overt acts (*k*) But arguments and words of advice or persuasion, uttered in contemplation of some traitorous purpose actually on foot or intended, and in prosecution of it, and consulting together for such a purpose, are such overt acts (*l*)

An act which constitutes another species of treason (*e.g.* levying war) may be alleged as an overt act of compassing the death of the King (*m*) But a constructive levying of war is not an overt act of this species of treason (*n*)

(11) *Levying War*

**Levying war**  
**against the**  
**King.**

**879** The levying of war (*a*) must be by acts done within the realm, which formerly included only England and Wales and so much of the seas adjacent as came within the body of a county (*b*) The effect of later statutes is to extend the provisions of the Act to Scotland (*c*) and Ireland (*d*), but not to the Channel Islands or the colonies (*e*)

(*h*) *R v Hensley* (1758), 19 State Tr 1342

(*i*) 1 Hale, P C 118, Post 198 In *R v Peacham* (1615), 2 State Tr 870, the prisoner was convicted upon evidence that a treasonable sermon had been found in his study, though it had not been preached. Many of the judges being of opinion that this was not treason, he was not executed (see Post 198) In *R v Algernon Sidney* (1683), 9 State Tr 817, the prisoner was convicted on evidence of a document found in his house and was executed, the conviction was afterwards reversed by Act of Parliament (9 State Tr 896), but on the ground that it was not proved that the document was in the prisoner's handwriting *R v Sidney, supra*, cannot now be regarded as an authority, see 1 Hale, P C, ed by Emlyn, 118, n (*h*) But documents, even if not published, may be evidence of treason, if they are connected with other treasonable practices charged in the indictment (Post 198) See *R v Preston (Lord)* (1691), 12 State Tr 645, 709, *R v Gregg* (1708), 14 State Tr 1371, 1375, *R v Laver* (1722), 16 State Tr 93, 205, *R v Hensley, supra*

(*k*) *R v Pine* (1628), 3 State Tr 359

(*l*) Post 200, *R v Charnock* (1698), 12 State Tr 1377, at col 1452, *R v Parkyns* (1696), 13 State Tr 63, 132

(*m*) *R v Hensley, supra*, at p 1344

(*n*) Post 213, 1 Hale, P C 123, *R v Darrel* (1716), 10 Mod Rep 321 As to what constitutes a constructive levying of war, see p 453, post

(*a*) Namely, that which is punishable under the Treason Act, 1351 (25 Edw 3, stat. 5, c 2)

(*b*) See p 271, ante, as to criminal jurisdiction generally

(*c*) Treason Act, 1709 (7 Ann c 21), s 1

(*d*) Stat (1494) 10 Hen 7, c. 22, *R v Smith O'Brien* (1849), 7 State Tr (N S) 1, 347, 375

(*e*) 1 Hale, P C 155 But a person committing acts of war in any part of the King's dominions or abroad in conjunction with a foreign enemy would be guilty of the treason of adhering to the King's enemies See *R v Vaughan* (1696), 13 State Tr 485, *R v Lynch* (1902), Shorthand Notes, 3, 107, 116

The levying of war must be against the King, and an attack upon private persons for a private end is not, whatever tumult be occasioned, a levying of war upon the King (*f*)

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Offences  
against the  
Sovereign

What acts  
amount to  
levying war

**880** To constitute a levying of war it is not necessary that blows should be struck, there must be *bellum levatum*, but not necessarily *bellum percutsum*. It is sufficient, if there is an arming and arraying in warlike manner, as by enlisting and marching troops, or if there is an assembling in great numbers with warlike intent, or a cruising in a ship with the like intent (*g*). A bare conspiracy or consultation with a view to a levying of war, though it may in some cases amount to an overt act of compassing the King's death, is not a levying of war against him (*h*).

**881** A small number of persons may be guilty of levying war against the King, if such persons are preparing to use violent measures in carrying out their purpose, as, *e.g.*, by the use of explosives with a treasonable intent (*i*). If large numbers are assembled with a treasonable purpose, it is the purpose of the assembly which constitutes treason and distinguishes it from riot (*h*).

Number not  
material.

**882** The levying of war may be of two kinds—(1) express and direct, as raising war against the King or his forces, or with a view to surprise or injure the King's person, or to imprison him, or to force him to remove any of his ministers or counsellors, and the like or (2) constructive, as when there is a rising for some general public purpose, as to effect an alteration of the law, or to alter religion established by law, or to throw down all inclosures, or to open all prisons, or to pull down all meeting-houses (*l*). A person who takes part in any such acts, even though he had not previously any formed intention of taking part in them, is guilty of treason (*m*).

Direct  
levying of  
war

(2) Constructive

A rising to maintain a private claim of right, or to destroy particular inclosures or to remove private nuisances, or to break prisons in order to release particular persons (unless such persons are imprisoned for treason), or to destroy the machinery of a

Private rights

(*f*) Post 209, 1 Hale, P C 131, see also Treason Act, 1351 (25 Edw 3, stat 5, c 2)

(*g*) Post 208, 1 Hale, P C 131, 144, *R v Vaughan* (1696), 13 State Tr 485, 532, *R v Dammarce* (1710), 15 State Tr 522, 606 See also title CONSTITUTIONAL LAW, Vol VI, p 348

(*h*) 1 Hale, P C 131

(*i*) *R v Gallagher* (1883), 15 Cox, C C 291, 315, 317 See *R v Deasy* (1883), 15 Cox, C C 344

(*k*) *R v Hardie* (1820), 1 State Tr (N S) 610, 765

(*l*) Post 210, 213, 1 Hale, P C 131, *R v Dammarce*, *supra*, *R v Purchase* (1710), 15 State Tr 651, 699, *R v Gordon* (1781), 21 State Tr 465, 644, *R v Thistlewood* (1820), 33 State Tr 681, 684, 955

(*m*) *R v Purchase*, *supra*, 1 East, P C 102 But a person who is merely present without committing any particular act of force cannot be convicted of constructively levying war (*R v Messenger* (1668), 6 State Tr 879, 913) As to rescuing or permitting the escape of a person in prison for treason, see note (*k*) on p 455, *post*, and p 511, *post*

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**against the**  
**Sovereign**

**Joining**  
**rebels.**

particular trade, does not amount to a levying of war within the meaning of the statute (*n*)

**883** In an actual insurrection it is a levying of war to join with rebels in an act of rebellion. But if a person joins with rebels from force or from fear of death at their hands, and if he takes the first opportunity to escape from them, he will be excused, provided compulsion continued during substantially the whole of the time he remained with the rebels to such an extent that he may be presumed to have continued with them against his will (*o*)

An apprehension, however well grounded, of loss or destruction of property will not excuse one who joins with rebels, and compulsion and fear are no excuse for any other act of treason than that of joining with rebels or enemies (*o*)

Service in war under the King *de facto* is not an act of treason against the King *de jure* (*p*)

(iii) *Adherence to the King's Enemies*

**Adherence**  
**to the King's**  
**enemies**

**884** Adherence to the King's enemies must be evidenced by an overt act. Such adherence may be either within the realm or elsewhere (*q*)

The King's enemies are foreign States in actual hostility against him. Whether a particular State is in actual hostility or not is a question of fact for the jury, who may judge of the matter from public notoriety (*r*). It is not necessary that there should have been any formal declaration of war (*s*)

**Acts of**  
**adherence**

**885** A person adheres to the King's enemy who, in conjunction with the enemy, commits hostile acts upon the King's ally who is also at war with the King's enemy (*a*)

If the subject of a foreign State not at war with the King invades the kingdom without his sovereign's warrant, he is nevertheless an enemy of the King, and a subject of the King who adheres to him is guilty of this species of treason (*b*)

Inciting a foreign State not at war with the King to invade the kingdom is not an adherence to the King's enemies, but is an overt act of compassing the King's death (*c*)

(*n*) *Fost* 210, 1 *Hale*, P C 133\* 143, 149, *R v Hardie* (1820), 1 *State Tr* (N S) 610, 763, *R v Frost* (1839), 4 *State Tr* (N S) 86, 444

(*o*) 3 *Co Inst* 10, *Fost* 216, 1 *East*, P C 70, 71, *R v MacGrowther* (1746), 18 *State Tr* 391

(*p*) *Stat* (1495) 11 *Hen* 7, c 1, s 1. See title CONSTITUTIONAL LAW, Vol VI, p 346

(*q*) *Treason Act*, 1351 (25 *Edw* 3, stat 5, c 2). See *R v Lynch*, [1903] 1 *K B* 444, *R v Vaughan* (1696), 13 *State Tr* 485

*Fost* 219, 1 *East*, P C 77

1 *Hale*, P C 162

*Fost* 220, 1 *East*, P C 79, *R v Vaughan* (1696), 13 *State Tr* 485, 530

(*b*) *Fost* 219, 1 *East*, P C 78

(*c*) 1 *East*, P C 78, *Story's Case* (1571), 3 *Dyer*, 298 b. If war resulted from such incitement, then the persons who incited would be guilty of adherence to the King's enemies (1 *East*, P C 78)

A distinction is drawn between "enemies" and "rebels," and assistance given to rebels within the realm is not an adherence to the King's enemies (*d*)

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Sovereign

A person may adhere to the King's enemies by sending them money or provisions, or by rendering them any kind of aid or comfort which, when given to a rebel within the realm, would make the subject guilty of levying war (*e*)

Communications with the enemy from which he may derive information enabling him to shape his attack or defence constitute an adherence to the enemy (*f*) The fact that the communications were intercepted and did not reach the enemy is immaterial (*g*)

A British subject adheres to the King's enemies if he takes an oath of fidelity to them, or makes a declaration of willingness to take up arms on their behalf, or becomes naturalised in the hostile State while it is at war with the King, unless he acts under compulsion and returns to his allegiance as soon as possible (*h*)

Mere acts of submission to *force majeure* in case of an invasion are not overt acts of treason (*i*), nor is the refusal to give personal assistance to the King or his forces against an invading enemy (*j*).

#### (iv) Indictment and Trial

**886** All persons who incite, aid, or abet an act of treason, or who receive or protect a traitor, are guilty of treason as principals and should be indicted as such There are no accessories either before or after the fact in treason A person who commits an act by which, in felony, he would become an accessory is in treason a principal traitor (*k*)

No accessories  
in treason

(*d*) 1 Hale, P C 159, 3 Co Inst 11, *R v Sheares* (1798), 27 State Tr 255, 388, 391 But such assistance would be an overt act of levying war or of compassing the King's death (*R v Tynley* (1746), 18 State Tr 329)

(*e*) 1 East, P C 78, Foot 217

(*f*) Foot 217, *R v Preston (Lord)* (1691), 12 State Tr 645, *R v Greeg* (1708), 14 State Tr 1371 *R v Henney* (1706), 19 State Tr 1341, 1344, *R v Tyrie* (1782), 21 State Tr 815, *R v Jackson* (1790), 25 State Tr 783 *R v Sheares* (1798), 27 State Tr 255 In *R v Stone* (1796) 25 State Tr 1153, it was contended by Erskine on behalf of the prisoner that such communications were not traitorous, if the prisoner's object and intention were not to assist the enemy but to benefit this country by dissuading the enemy from continuing the war (see cols 1372 *et seq*) Lord KENYON, C J, does not appear to have ruled against this contention (see cols 1432, 1434, 1435), and the jury acquitted the prisoner, apparently upon this ground

(*g*) *R v Henney* (1758), 19 State Tr 1341, 1372, *R v De la Motte* (1781), 21 State Tr 687, 808

(*h*) 1 Hale, P C 167, *R v Lynch*, [1903] 1 K B 444

(*i*) Foot 217

(*j*) 1 East, P C 80, but this is stated to be a high misdemeanour punishable by fine and imprisonment (*ibid*)

(*k*) Foot, 341, 1 Hale, P C 233 A gaoler who voluntarily permits a person imprisoned for treason to escape, and anyone who rescues such a person, is himself guilty of treason (Foot 344) Although a person who receives and harbours a traitor is himself said to be guilty as a principal traitor, he must be indicted specially for such receiving and harbouring, and not for the principal treason, and he cannot be tried on a separate indictment for the receiving and harbouring,

- SECT. 1**  
**Offences against the Sovereign**
- 887** Different kinds of treason and different overt acts may be alleged in the same indictment, and such joinder does not vitiate the indictment nor afford any ground for putting the Crown to an election to proceed on one charge (*l*)
- Overt acts** **888** The treason alleged must be proved by overt acts, and the overt acts upon which it is intended to rely must be expressly alleged in the indictment (*m*), and must be proved (*n*), and no evidence is admissible of any overt act that is not so alleged unless it affords direct proof of any of the overt acts that are laid (*o*)
- Copy of indictment and list of witnesses and petty jury** **889** A copy of the indictment must be supplied to the accused ten days before the trial, together with a list of the witnesses and, except where the treason charged is the assassination of or any attempt upon the person of the Sovereign, a list of the petty jury, with their addresses and occupations (*a*). Where there is a failure to comply with the last-named requirements, advantage of the omission cannot be taken by plea, but an application may be made for a postponement of the trial (*b*)
- Limitation of time.** **890** An indictment for treason must be found by the grand jury within three years next after the commission of the treason, unless in the case of the treason of designing, endeavouring, or attempting the assassination of the King, in which case there is no limitation of time (*c*)
- Two witnesses necessary** **891** Except in cases of personal attacks upon the King, there must be two witnesses, either both of them to the same overt act or one of them to one overt act and the other to another overt act charged in the indictment, provided that the latter is of the same
- until after the traitor alleged to have been received is convicted, if the receiver is tried for the receiving and harbouring upon the same indictment with the principal offender, as he may be, the jury must first be charged to inquire as to the guilt of the latter, and if he be acquitted, the receiver must also be acquitted (1 Hale, P. O. 238 Post 345) See also the Act of 1 Will & Mar., sess. 1 (1688), for annulling the attainder of Lady Alice Lasle (11 State Tr. 297, 381), and p. 256 ante
- (*l*) *R v Mitchel* (1818), 6 State Tr. (N. S.) 309, 620
- (*m*) Treason Act, 1695 (7 & 8 Will. 3. c. 3), s. 8. If the overt acts alleged consist of words or documents, it is sufficient to set out their effect, and it is not necessary to set out the exact words, *R v Francis* (1717), 15 State Tr. 897, *R v Wilson* (1817), 2 Stark. 116, 132. See also *R v Vaughan* (1698), 13 State Tr. 485, 498
- (*n*) Treason Act, 1331 (25 Edw. 3, stat. 5, c. 2), Treason Act, 1796 (36 Geo. 3, c. 7), s. 1
- (*o*) *R v Rookwood* (1696), 13 State Tr. 139, 217, *R v Layer* (1722), 16 State Tr. 93, 223, *R v Deacon* (1746), 18 State Tr. 360
- (*a*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 1, Treason Act, 1708 (7 Ann. c. 21), s. 14, Juries Act, 1825 (6 Geo. 4, c. 50), s. 21. The copy of the indictment should include the caption (1 Chittv, Criminal Law, 405), see p. 348, ante
- (*b*) *R v Burle* (1867), 10 Cox, C. C. 519 (Ir.), *R v Frost* (1839), 4 State Tr. (N. S.) 85. An irregularity in the copy of the indictment supplied will be cured by plea (Post. 230)
- (*c*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), ss. 5, 6

species of treason (d) Both the witnesses must be credible, and the jury must believe them both (e)

SECT 1  
Offences  
against the  
Sovereign

One witness is sufficient to prove a collateral fact, not tending to the proof of the overt act, e.g., the status or nationality of a person (f)

If the prisoner confesses in open court, the two witnesses are not required (g)

Evidence of confessions out of court is admissible, but such evidence is not sufficient in itself, and can only be supplementary to the evidence of the two witnesses required by statute (h)

**892** Except in the case of treason committed abroad, proof must be given that one of the overt acts alleged was committed within the jurisdiction of the court, when this has been done, evidence can be given of the commission of the alleged overt acts committed outside the jurisdiction of the court (i)

Evidence.

**893** Where the overt acts charged in the indictment show a conspiracy between the prisoner and others, evidence may be given of any acts committed by a co-conspirator in the execution of the common design, even if such acts occurred after the dates of the alleged overt acts and after the prisoner's arrest, if such events were the natural result of the conspiracy in which he was engaged, as, e.g., the breaking out of an insurrection which was the object of the conspiracy (h)

Conspiracy.

**894** In treason a married woman cannot excuse herself by alleging that she acted under the coercion of her husband (l) But if the husband commits treason and his wife knowingly receives him, she does not herself become guilty of treason (m)

Married  
woman

#### SUB-SECT 2—Treason Felony

**895** Everyone is by statute (n) guilty of felony who, either within the United Kingdom or without, compasses, imagines, invents, devises or intends (1) to deprive or depose the king from

Treason  
felony

(d) Treason Act, 1695 (7 & 8 Will 3, c 3), ss 2, 4, Treason Act 1795 (30 Geo 3, c 7), s 1, *R v Torick* (1695), 13 State Tr 267, 305 *R v McCafferty* (1867), 10 Cox, C C 603, C C R

(e) *R v Castlemaigne (Lord)* (1680), 7 State Tr 1067, 1112

(f) Fost 240

(g) *Ibid*

(h) Fost 240—244, *R v Willis* (1710), 15 State Tr 613, 623, *R v Brinck* (1746), 18 State Tr 367, *R v Crossfield* (1796) 26 State Tr 1, 65

(i) *R v Vane* (1662), 6 State Tr 119, 123 As to venue, see pp 283, 284, ante, as to challenges, see p 361, ante As to treasons committed abroad, see p 276, ante

(k) *R v Horns Tooke* (1791), 1 East P C 98, *R v Hardy* (1794), 1 East, P C 99, *R v Watson* (1817) 2 Stark 110, 127, *R v McCafferty* (1867), 10 Cox, C C 603, C C R, see *R v Ston* (1796), 6 Term Rep 527

(l) 1 Hale, P C 46

(m) 1 Hale, P C 47

(n) Treason Felony Act 1848 (11 & 12 Vict c 12), s 3. As to treason felony, see also title CONSTITUTIONAL LAW, Vol VI, p 354

**SECT 1**  
**Offences**  
**against the**  
**Sovereign**

the style or honour of the Crown of the United Kingdom or of any of the King's dominions, or (2) to levy war against the King within the United Kingdom in order by force or constraint to compel him to change his measures or counsels, or in order to put force or constraint upon or to intimidate or overawe either House of Parliament, or to move or stir any foreigner with force to invade the United Kingdom or any of the King's dominions, and who expresses, utters, or declares such compassings or intentions by publishing any printing or writing, or by any overt act or deed (o)

**896** There may be accessories to the offence of treason felony. A principal in the second degree and an accessory before the fact are punishable in the same manner as a principal in the first degree, accessories after the fact are liable to imprisonment with or without hard labour for a term not exceeding two years (p)

**Indictment.**

**897** Any number of overt acts may be charged in an indictment for treason felony (q). It is a sufficient overt act that the accused conspired with others (r) to commit any offence specified by the Treason Felony Act, 1848 (s), if there was an overt act committed within the King's dominions. If the matters alleged in the indictment or proved at the trial amount in law to treason, the indictment is not on that account defective, nor is the accused entitled to an acquittal, but an acquittal or conviction on an indictment for treason felony will be a bar to a prosecution for treason upon the same facts (t).

**Overt acts**  
**out of juris-**  
**isdiction**

Even although the prisoner has not committed within the King's dominions any of the acts mentioned in the statute he may be tried in an English court in respect of the act of a co-conspirator committed within the jurisdiction of the court in furtherance of the common object (a).

**Punishment.**

**898** The punishment for treason felony is penal servitude for life, or for not less than three years, or imprisonment with hard labour for not more than two years (b).

(o) As to what amounts to a "levying of war," see p 452, *ante*, and *R v Dowds* (1848), 3 Cox, C C 509, *R v Gallagher* (1863), 15 Cox, C C 291. As to overt acts, see note (e) on p 451 *ante*.

(p) Treason Felony Act, 1848 (11 & 12 Vict c 12), s 8.

(q) *Ibid*, s 5. There is no objection to alleging several overt acts in one count (*Mulcahy v R* (1868), 1 R 311 I. 306).

(r) *Mulcahy v R*, *supra*, *R v Davitt* (1870), 11 Cox, C C 676.

(s) 11 & 12 Vict c 12.

(t) Treason Felony Act, 1848 (11 & 12 Vict c 12), s 7, *R v Mitchell* (1848), 6 State Tr (N S), 599. Nothing in the Act is to lessen the force of, or in any manner affect, anything enacted by the Treason Act, 1351 (25 Edw 3, stat c. 2), *ibid*, s 6.

(a) *R v Meany* (1867), 10 Cox, C C 506 (Ir), C C R, see also *R v Deasy* (1883), 15 Cox, C C 334. Unless some overt act is committed within the King's dominions, there can be no prosecution for treason felony (*R v Meany*, *supra*).

(b) Treason Felony Act, 1848 (11 & 12 Vict c 12), s 3, Penal Servitude Act, 1857 (20 & 21 Vict c 3), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions (Quarter Sessions Act, 1812 (5 & 6 Vict c 38), s 1).



SUB-SECT 3—*Assaults on the King*

## SECT 1.

Offences  
against the  
Sovereign.Assaults on  
the King.

**899** By statute (c) a person is guilty of a high misdemeanour who—(1) wilfully discharges or attempts to discharge or points, aims, or presents at or near the person of the King any gun, pistol, or any other firearm or other arms, whether the same does or does not contain any explosive or destructive material, or discharges or causes to be discharged or attempts to discharge or causes to be discharged any explosive substance or material near to the King's person, (2) wilfully strikes or attempts to strike at the King with any offensive weapon or in any other manner, (3) wilfully throws or attempts to throw any substance etc at or upon the person of the King (d), (4) wilfully produces or has near the person of the King any gun etc, or any explosive, destructive, or dangerous matter, with intent to use the same to injure the person of the King or to alarm him (e) The offence is not triable at quarter sessions (f)

The punishment for these offences is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years, and not more than three whippings during the imprisonment (g)

Upon an indictment for shooting at the King it is unnecessary to prove any intention to inflict personal injury or to prove that the firearm used was capable of doing such an injury (h)

SUB SECT 4—*Contempts against the King*

**900** It is a contempt against the King to disobey any of his lawful commands (i) Thus, it is a contempt punishable by fine or imprisonment to disobey the orders of the King's courts of

(c) Treason Act, 1842 (5 & 6 Vict c 51), s 2 See title CONSTITUTIONAL LAW, Vol VI, p 355

(d) In any of these cases the act must have been done with intent to injure the person of or to alarm the King, or the result must be to endanger the public peace (*ibid*)

(e) Treason Act, 1842 (5 & 6 Vict c 51), s 2

(f) Quarter Sessions Act 1842 (5 & 6 Vict c 38), s 1

(g) Treason Act, 1842 (5 & 6 Vict c 51), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1, Penal Servitude Act, 1857 (20 & 21 Vict c 3), s 2 By the Treason Act, 1842, s 2, the maximum length of imprisonment as an alternative punishment is three years with or without hard labour It is uncertain whether or not the effect of the Penal Servitude Act, 1891, s. 1 (2), is to reduce the maximum imprisonment to two years

(h) *R v Hamilton* (1849), 7 State Tr (N s) 1130

(i) In the earlier works on criminal law a long list of offences are given under the heading of "contempts" or "misprisions" These were either contempts against the King's palace or courts of justice, or against his person, title, prerogative, or Government (see 1 Hawk P C 61, c 6, 4 Bl Com 122, 3 Co Inst 140 Petersdorff's Abridgment, tit Contempt) Some contempts of this character may now be dealt with as seditious libels (see *R v Harvey* (1823), 2 B & C 257), and others are now hardly likely to form the subject of prosecution, e.g. such as disobedience to a summons to attend the Privy Council, or to a royal letter requiring a subject to return from abroad (4 Bl Com 122, Petersdorff's Abridgment, tit Contempt) No prosecution for such an offence has occurred in modern times In *R v Harris* (1791), 4 Term Rep 202, it was held to be a misdemeanour to disobey an order of the King in Council made under the provisions of an Act of Parliament which did not specify any penalty for disobedience, but this was apparently upon the ground that the defendant had really disobeyed the statute, and see *R v Hall*, [1891] 1 Q B 747, 767.

|   |  |
|---|--|
| <b>SECT 1</b><br><b>Offences</b><br><b>against the</b><br><b>Sovereign.</b> | justice ( <i>k</i> ), or to disobey the provisions of an Act of Parliament, where no particular penalty is imposed and when the act is one which prohibits a matter of public grievance or commands a matter of public convenience ( <i>l</i> ). Where a statute only extends to disputes of a private nature ( <i>m</i> ), or where a particular remedy or punishment is provided by the statute ( <i>n</i> ), disobedience to it cannot be punished as a contempt. |
| <b>Punishment.</b>  | The punishment for this offence is fine and imprisonment without hard labour ( <i>o</i> ).   |

## SECT 2 — *Offences against Public Tranquillity.*

### SUB-SECT 1 — *Sedition*

|  |  |
|--|--|
| <b>Seditious</b><br><b>conspiracy.</b> | <b>901</b> Every person is guilty of the common law misdemeanour of seditious conspiracy who agrees with someone else (not being his or her wife or husband) to do any act for the furtherance of a common seditious intention, <i>eg</i> , to hold a meeting for the purpose of disturbing the public peace or of raising discontent and disaffection or exciting hatred and contempt of the Government ( <i>p</i> ). |
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|                                   |  |
|-----------------------------------|--|
| <b>Seditious</b><br><b>libel.</b> | <b>902</b> Every person is guilty of the common law misdemeanour of seditious libel if, with seditious intention, he either speaks and publishes any words or publishes a libel ( <i>q</i> ).<br>The freest public discussion, comment, criticism, and censure, either at meetings or in the Press, in relation to all political or party questions, all public acts of the servants of the Crown, all acts of the Government, and all proceedings of courts of justice are permissible, and no narrow construction is to be put upon the expressions used in such a discussion etc, but the criticism and censure must be without malignity, and must not impute corrupt or malicious motives ( <i>r</i> ). |
|-----------------------------------|--|

If the words used, however defamatory, were not spoken with a seditious intention the defendant is not guilty, such an intention

(*k*) See p 501, *post*, and title CONTEMPT OF COURT, Vol VII, p 279

(*l*) 4 Bl Com 122, 1 Hawk P O, c 6, 2 Hawk P C, c 20, s 4, *Crouther's Case* (1599), Cro Eliz 654, *R v Price* (1840), 11 Ad & El 727, *R v Savinbury* (1791), 4 Term Rep 451, 457, *R v Hall*, [1891] 1 Q B 747, 753

(*m*) 2 Hawk P O, c 26, s 4 (where a number of instances are given)

(*n*) *R v Wright* (1758), 1 Burr 543

(*o*) The offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(*p*) Stephen's Digest of Criminal Law, 6th ed, pp 70, 71. For instances of seditious conspiracies, see *R v O'Connell* (1844), 11 Cl & Fin 155, *R v Hunt* (1820), 1 State Tr (N s) 171, *R v O'Connor* (1843), 4 State Tr (N s) 935, *R v Cooper* (1843), 4 State Tr (N s) 1249, *R v Holberry* (1840), 4 State Tr (N s) 1347, see *R v Burns* (1886), 16 Cox, C C at p 365, *R v Parnell* (1881), 14 Cox, C C 508

(*q*) The libel may be in writing, print, or may be contained in a drawing or engraving, or painted picture, or sculpture, or any permanent representation (*R v Sullivan* (1865), 11 Cox, C C 44, at p 55). Libel in civil cases is restricted to such permanent representations, but in criminal cases words spoken may amount to a seditious libel.

(*r*) *R v Sullivan, supra*, at p 49. Every man has a right to give every public matter a candid, full and free discussion, something must be allowed for feeling in men's minds and for some warmth of expression, but an intention

being of the essence of the offence, but the character of the words may form irresistible evidence of the nature of the intention (s).

The punishment for these offences is imprisonment without hard labour for a period not exceeding two years with or without a fine (t)

SECT. 1.  
Offences  
against  
Public  
Tran-  
quillity.

**903** Seditious words with regard to the administration of justice in a superior court, whether spoken in or out of court, are punishable by indictment or information, or summarily by attachment for contempt, by the court whose proceedings are defamed (u), and the last-mentioned course is that which is now usually adopted

Libel on the  
administra-  
tion of  
justice.

Such words spoken of an inferior court of record are punishable summarily by that court, if they are spoken in the face of the court (a) If spoken of the judge out of court and relating to the execution of his office they are indictable, but not if they are only abusive or defamatory of the judge personally (b)

**904** Words spoken in Parliament by a member of Parliament cannot be the subject of indictment or other proceedings out of Parliament (c) But if the member afterwards publishes his speech,

Privilege of  
Parliament.

to incite the people to take the power into their own hands and to provoke them to tumult and disorder is a seditious intention (*R v Collins* (1839), 9 C & P 456, at p 461, *per LITTLEDALE, J*, and see *R v Burdett* (1820), 1 State Tr (N s) 1, 50)

(a) *R v M'Hugh*, [1901] 2 I R 569, 557 If the words, whether written or spoken, have a direct tendency to cause unlawful meetings and disturbances and to lead to a violation of the laws, they are seditious, as the defendant will be taken to have intended the natural consequences of what he has done (*R v Lovett* (1839), 9 C & P 462, 466, *per LITTLEDALE, J*, *R v Sullivan, supra*, at p 58, see also *R v Horne* (1777), 20 State Tr 651, 762) The document containing an alleged seditious libel must be considered as a whole, if it is contained in a newspaper, the defendant is entitled to take the whole in evidence other passages in the same newspaper tending to show his intention in publishing the specific paragraph complained of (*R v Lambert* (1810), 2 Camp 398) On the trial of *Horne Tooke* for high treason passages from his writings some years previously were allowed by EYRE, C J, to be read on the prisoner's behalf to show his political sentiments (*R v Horne Tooke* (1794), 25 State Tr 1, 321, 344, 361), but in *R v Lambert, supra*, LORD LILLESBOROUGH, C J, apparently doubted whether that evidence had been properly admitted

(t) See Criminal Libel Act, 1819 (60 Geo 3 & 1 Geo 4, c 8), s 4, stat 11 Geo 4 & 1 Will 4, c 24), s 1 The person imprisoned is to be treated as a misdemeanant of the first division (Prison Act, 1877 (40 & 41 Vict c 21), s 40) On a conviction for a seditious libel, the court may make an order for seizure of all copies of the libel (Criminal Libel Act, 1819 (60 Geo 3 & 1 Geo 4, c 8), s 1)

(u) See *R v Abnon* (1765), Wilk 243, 252 *et seq*, *Crawford's Case* (1849), 13 Q B 613, 628, see *R v Gray*, [1900] 2 Q B 36, *McLeod v St Aubyn*, [1899] A C 549, P O See title CONTEMPT OF COURT, Vol VII, p 279

(a) See *Rainy v Sierra Leone Justices* (1853), 8 Moo P C O 47, 54 As to county courts, see County Courts Act, 1888 (51 & 52 Vict c 43), s 162, and title COUNTY COURTS, Vol VIII, p 615

(b) *R v Wrightson* (1708), 11 Mod Rep 166, *R v Rivel* (1721), 1 Stra 420, *R v Pocock* (1741) 2 Stra 1157, *Ex parte Marlborough (Dule)* (1814), 5 Q B 955, *R v Wellje* (1809), 2 Camp 142, *R v Lejoy* (1873), 1 L R 8 Q B 134, *R v Brompton County Court Judge*, [1893] 2 Q B 19, 199 See also title CONTEMPT OF COURT, Vol VII, p 281

(c) Bill of Rights (1 Will & Mar, sess 2, c 2), *Ex parte Wason* (1869), L R 4 Q B 573, *Dillon v Balfour* (1887), 20 L R Ir 600

**SECT 2**  
**Offences**  
**against**  
**Public**  
**Tran-**  
**quillity.**

**Indictment**

the absolute privilege is lost, and he may be indicted, if the publication was illegal (*d*)

**905** In an indictment for seditious words spoken, or for a seditious libel, the words alleged to be seditious must be specified (*e*) It is not essential that the indictment should allege that the words were spoken or published "seditiously," if it alleges an intent which the law defines to be a seditious intent (*f*)

**Evidence**

**906** If the manuscript of a seditious libel is proved to be in the handwriting of the defendant, and it is also proved that the same libel was in fact published, this is *prima facie* evidence for the jury of a publication by the defendant, though no evidence is adduced that he directed the publication (*g*)

To prove that the publication was with an unlawful intent or was not accidental, evidence of the publication of other libels is admissible, provided they expressly refer to the subject matter of the libel which is charged in the indictment (*h*)

It is essential that so much of the words alleged be proved at the trial as will support the charge of sedition, but it is immaterial that a portion is unproved, if what is proved substantially constitutes sedition (*i*)

If words spoken or published are seditious, it is no defence that they are true, and evidence to prove their truth is inadmissible (*k*)

**Libels in**  
**newspaper.**

**907** No criminal prosecution can be commenced against any proprietor, publisher, editor, or any person responsible for the

(*d*) *R v Abingdon (Lord)* (1791) 1 Esp 226, *R v Creney* (1813) 1 M & S 273, approved in *Davison v Duncan* (1857) 7 E & B 229, 231, and *Wason v Walter* (1868), 1 L R 4 Q B 73, 95 The publication of seditious matter by a newspaper in a *bona fide* report of proceedings in a court of justice or in Parliament would not be criminal (*Wason v Walter, supra*), but the publication of isolated seditious matter in a newspaper might be criminal

(*e*) See the opinion of the judges in *R v Sacheverell* (1710), 15 State Tr 1 466, and the judgment in *R v Sparling* (1722), 1 Stia 197, *Brudlough v R* (1876), 3 Q B D 607, 619, C A

(*f*) *R v M'Hugh*, [1901] 2 I R 569

(*g*) *R v Lovett* (1839), 9 C & P 462, see, further, as to what amounts to a publication, title LABEL AND STAMPER It is uncertain whether the composition of a seditious writing with the intent that it should be published, but without any actual publication, is a punishable offence (see *R v Burdett* (1820), 1 State Tr (N S) 1, 122, 138) The Criminal Libel Act, 1819 (6 Geo 3 & 1 Geo 4 c 8), ss 1, 4, appears to contemplate the composition of a blasphemous or seditious libel as a distinct offence from the publication of such a document

(*h*) *R v Pearce* (1791), Peake, 75, in which case Lord KENYON, C J, even admitted such evidence to prove the fact of publication and that the defendant was the author of a libel, but see *Finerty v Tipper* (1809), 2 Camp 72 *Chubb v Westley* (1834) 6 C & P 436, *Plunkett v Cobbett* (1804), 5 Lsp 136, *Pearson v Lemastre* (1843), 5 Man & G 700, 719, 720

(*i*) *R v Russell* (1848), 3 Cox C C 291, 294 The whole of the speech or writing need not be set forth in the indictment and if any part of it varied or controlled the sense of the matter alleged to be seditious, the onus is upon the defendant to show it (*Re Crowe* (1848), 3 Cox, C C 123)

(*k*) The Libel Act, 1843 (6 & 7 Vict c 96), s 6, and the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict c 60), s 4, do not apply to seditious libels (*R v Duffy* (1846), 2 Cox, C C 45, *Ex parte O'Brien* (1883), 15 Cox, C C 180 (Ir.), *R v M'Hugh*, [1901] 2 I R 569).

publication of a newspaper, for any libel published therein without the order of a judge in chambers being first obtained, the person accused is entitled to notice of an application for such an order and to be heard thereon (*l*)

SECT 2  
Offences  
against  
Public  
Tran-  
quillity.

**908** In all prosecutions for libel the jury are competent to give their verdict upon the whole matter in issue and cannot be required or directed by the judge to find a defendant guilty on proof of the publication of the libel by the defendant and of the result ascribed to the libel in the indictment (*m*)

Functions of  
jury

**909** A seditious intention is an intention—(1) to bring into hatred or contempt, or to excite disaffection against, the King or the Government and Constitution of the United Kingdom, or either House of Parliament, or the administration of justice (*n*), or (2) to excite the King's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or (3) to incite any person to commit any crime in disturbance of the peace, or (4) to raise discontent or disaffection amongst His Majesty's subjects, or (5) to promote feelings of ill will and hostility between different classes of such subjects (*o*)

Seditious  
intention

But an intention is not seditious if the object is to show that the King has been misled or mistaken in his measures, or to point out errors or defects in the Government or Constitution with a view to their reformation, or to excite the subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill will between classes of the King's subjects (*p*)

In this as in other offences a person is deemed to intend the consequences which would naturally follow from his conduct at the time, and in the circumstances, in which the words were used

**910** By statute (*q*) a person is guilty of a misdemeanour who maliciously and advisedly, by writing, printing, preaching or other speaking, expresses, publishes, utters, declares or affirms (1) that there lies any obligation upon himself or any other person what-

Labels on the  
Constitution

(*l*) Law of Libel Amendment Act, 1888 (51 & 52 Vict c 61), s 8. As to newspaper reports of proceedings at public meetings, see title LIBEL AND SLANDER.

(*m*) Libel Act, 1792 (32 Geo 3, c 60), s 1.

(*n*) See *R v Lambert* (1810), 2 Camp 398, *R v Tutchin* (1704), 14 State Tr 1095, *R v Cobbett* (1804), 29 State Tr 1, *R v Hulkes* (1770) 4 Burr 252, *R v Harvey* (1823), 2 B & C 257, *R v M'Hugh*, [1901] 2 I R 369, and cases cited, p 460, *ante*.

(*o*) *R v M'Hugh*, *supra*, at p 576.

(*p*) The above statement of the law upon the subject of sedition is taken almost verbatim from Stephen's Digest of Criminal Law, 6th ed, pp 70-71, which is partly taken from the Criminal Libel Act, 1819 (60 Geo 3 & 1 Geo 4, c 8), s 1. The corresponding passage in the first edition of that work, pp 55, 56, which is in substantially the same terms, was approved and adopted by CAVE J, in *R v Burns* (1896), 16 Cox, C C 355, and by the Lord's Bench Division in Ireland in *R v M'Hugh*, *supra*. See also *R v Sullivan* (1868) 11 Cox, C C 44 (Ir). As to the difference between high treason and sedition, see 1 East, P C 48.

(*q*) Stat (1661), 13 Car 2, stat 1, c 1, s 3.

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**Offences**  
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**quillity.**

soever from any oath, covenant or engagement to endeavour a change of government either in Church or State, or (2) that both Houses or either House of Parliament have or has a legislative power without the King, the punishment for this offence is the penalty of *præmunire*. No person may be prosecuted for this statutory offence without an order of the King under the sign manual or of the Privy Council, and the prosecution must be commenced within six months next after the offence committed, and the indictment must be found within three months after the commencement of the prosecution (r)

**Libels as to**  
**succession to**  
**the Crown**

**911** Every person is by statute (s) guilty of a misdemeanour who maliciously and directly by preaching, teaching, or advised speaking declares that any person has any right to the Crown otherwise than according to the statutes (t) by which the succession is regulated, or that the Kings or Queens of the realm, with authority of Parliament, are not able to make laws to limit and bind the Crown and its descent. The punishment for the offence is the penalty of *præmunire* (u). An information for any such words spoken must be laid on oath before a justice within three days, the prosecution must be commenced within three months, and two credible witnesses are necessary (z).

None of the above offences is triable at quarter sessions (y).

**SUB-SIDI 2 — Inciting to Mutiny**

**Inciting to**  
**mutiny**

**912** Every person is by statute (a) guilty of a felony who maliciously and advisedly endeavours (1) to seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance, or (2) incites such person to commit any act of mutiny or to make or endeavour to make a mutinous assembly, or to commit any traitorous or mutinous practice. These offences are punishable by penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (a).

(r) Stat (1661) 13 Car 2, stat 1, c 1, s 4

(s) Succession to the Crown Act, 1707 (6 Ann c 41), s 2

(t) Namely, Bill of Rights (1688) (1 Will & Mar, sess 2, c 2), Act of Settlement (11 & 12 Will 3, c 2), and the Union with Scotland Act, 1706 (6 Ann c 11)

(u) Succession to the Crown Act, 1707 (6 Ann c 41), s 2. As to the penalty of *præmunire*, see note (a) on p 409

(a) Succession to the Crown Act, 1707 (6 Ann c 41), ss 2, 3

(y) Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1

(z) Incitement to Mutiny Act 1797 (37 Geo 3, c 70), s 1

(a) Punishment of Offences Act, 1877 (7 Will. 4 & 1 Vict c 91), s 1. Penal Servitude Act, 1857 (20 & 21 Vict c 3), ss 2, 3, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. These offences are not triable at quarter sessions. Any person subject to military law who (1) causes, or conspires to cause, a mutiny or sedition in His Majesty's regular or auxiliary forces, or (2) endeavours to seduce any person in such forces from his allegiance or to persuade any person in such forces to join in any mutiny or sedition, or (3) joins in or does not use his utmost endeavours to suppress such a mutiny or sedition, or (4), if an intended mutiny or sedition has come to his knowledge, fails without delay to inform his commanding officer thereof, is, on conviction by court-martial, liable to suffer death or such less punishment as is mentioned

It must be proved that the accused knew that the person whom he attempted to seduce was a person serving in the sea or land forces (b). A soldier or sailor is serving in such forces, although he is at the time in the hospital, and not in the receipt of pay, and not liable to be tried by court martial (c).

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quillity  
—

#### SUB-SECT 3—*Unlawful Oaths*

**913** Every person is guilty of a misdemeanour at common law, punishable with fine and imprisonment without hard labour, who administers an oath not being duly authorised by law to do so, whether the oath is innocent in itself or otherwise (d). Administering an oath without authority.

**914** A person is by statute (c) guilty of felony (1) who in any form administers or causes to be administered on a vessel or is present at and consenting to the administering or taking of any oath or engagement purporting or intended to bind the persons taking it to engage in any mutinous or seditious purpose, or to disturb the peace, or to be of any society formed for such purpose, or to obey the orders of any committee or body not lawfully constituted, or of any leader not having authority by law for that purpose, or not to inform or give evidence against any associate or other person, or not to reveal any unlawful combination or any illegal act done or to be done or any illegal oath or engagement or its import, or (2) who takes any such oath without being compelled thereto. Administering oath for seditious purposes etc.

The "unlawful combination" mentioned above is not confined to seditious or mutinous societies, but extends to all societies of an illegal nature (f).

The punishment for this offence is penal servitude for not more than seven years, or for not less than three years, or imprisonment with or without hard labour not more than two years (g).

in the Army Act (Army Act, 1881 (44 & 45 Vict c 58), s 7). As to mutinous by seamen of the Royal Navy, see Naval Discipline Act, 1866 (29 & 30 Vict c 109), ss 10—19. A civilian who persuades or assists a soldier to desert or who knowingly conceals a deserter, or aids in rescuing him, is liable on summary conviction to imprisonment with or without hard labour for six months (Army Act, 1881 (44 & 45 Vict c 58), s 153). See also title ROYAL FORCES.

(b) *R v Fuller* (1797), 2 Leach, 790, 798.

(c) *R v Tierney* (1804), Russ & Ry 74.

• (d) 3 Co Inst 165, *R v Endon* (1813), 31 State Tr 1064, 1069. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 39), s 1). See also p 497, *post*, as to the statutory offence of administering unnecessary oaths.

(e) Unlawful Oaths Act, 1797 (37 Geo 3, c 123), s 1.

(f) *R v Lovelass* (1834), 6 O & P 596, *R v Dixon* (1834), 6 O & P 601, see also *R v Marks* (1802), 6 East, 157, *R v Broadbitt* (1816), 6 O & P 571, where the oath was to observe secrecy as to a night poaching expedition. As to unlawful societies, see p 466, *post*.

(g) Unlawful Oaths Act, 1797 (37 Geo 3, c 123), s 1, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. As to the form of an indictment for the offence, see *R v Moors* (1801), 6 East, 419, n, C O R. A person who is tried and acquitted or convicted for an offence against this Act cannot be indicted

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Administer-  
ing or taking  
oath to  
commit  
treason or  
murder or  
felony.

**915** A person is by statute (*h*) guilty of felony who administers etc or takes without being compelled, any oath or engagement purporting or intending to bind the person who takes it to commit any treason or murder or any felony which in 1812 was punishable by law with death

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*i*) This offence is not triable at quarter sessions (*h*)

If the oath is taken under compulsion, the person taking it will not be excused, unless within fourteen days he gives information on oath to a justice of the peace or to a Secretary of State or Privy Councillor, or, if the person who took the oath is in His Majesty's forces, to his commanding officer (*l*)

**SUB-SECT. 4 — Unlawful Societies.**

**Unlawful**  
**societies.**

**916** There are certain societies which are by statute (*m*) declared to be unlawful combinations or confederacies They are— (1) societies whose members are required to take any oath or engagement prohibited by the Unlawful Oaths Act, 1797 (*n*), or the Unlawful Oaths Act, 1812 (*o*), (2) societies the members whereof are required to take any oath, test, or declaration not authorised by law, or which have committees or officers not known to the society at large, or the names of whose members are kept secret from each other, or which are composed of different branches acting distinctly from each other or having separate officers, or which appoint delegates to confer with any other society or club or to induce persons to join them (*p*)

Any person who becomes or acts as a member of any such society

again for the same offence as high treason or misprision of treason, but a person guilty of an offence against the Act, if not tried for that offence, may be tried for high treason or misprision of treason (*ibid*, s 7)

(*h*) Unlawful Oaths Act, 1812 (52 Geo 3, c 104), s 1, Punishment of Offences Act, 1837 (7 Will 4 & 1 Vict c 91), s 1

(*i*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*l*) Quarter Sessions Act, 1812 (5 & 6 Vict c 38), s 1

(*o*) Unlawful Oaths Act, 1812 (52 Geo 3, c 104), s 2

(*m*) Unlawful Societies Act, 1799 (39 Geo 3, c 79), s 2, Seditious Meetings Act, 1817 (57 Geo 3, c 19), s 25 There are exceptions in favour of Free masons' lodges (Unlawful Societies Act, 1799 (39 Geo 3, c 79), ss 5—7, Seditious Meetings Act, 1817 (57 Geo 3, c 19), s 26), if certain formalities are complied with, the Society of Quakers, and societies formed for purposes of a religious or charitable nature only in which no other business is discussed (s 2) Seditious Meetings Act, 1817 (57 Geo 3, c 19), s 27) By the Friendly Societies Act, 1896 (59 & 60 Vict c 23), s 32, registered friendly societies are not to be affected by the above statutes, if no other business is discussed at their meetings than that which relates to the objects of the society, and if, when required by two justices, they give full information of the nature, objects, proceedings and practices of the society In s 1 of the Unlawful Societies Act, 1799 (39 Geo 3, c 79), certain societies are expressly named as unlawful, but these have now ceased to exist

(*n*) 37 Geo 3, c 123

(*o*) 52 Geo 3, c 104

(*p*) Unlawful Societies Act, 1799 (39 Geo 3, c 79), s. 2; Seditious Meetings Act, 1817 (57 Geo. 3, c 19), s. 25



or directly or indirectly maintains correspondence or intercourse with it or any division etc of it, or aids, abets, or supports such a society or any of its members or officers as such, is guilty of a misdemeanour (q) Proceedings can only be taken in the name of one of the law officers of the Crown (r)

The punishment for this offence upon conviction or indictment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (s) A person who knowingly permits any meeting of any society which is an unlawful combination or confederacy, or of any division etc of such society, to be held in any house etc belonging to him or in his possession or occupation commits an offence for which he is liable to forfeit £5, if he commits such offence a second time, he is to be deemed guilty of an unlawful combination and conspiracy in breach of the Seditious Meetings Act (t)

#### SUB-SECT. 5—*Unlawful Drilling*

**917** All meetings and assemblies of persons for the purpose of training or drilling themselves or of being trained or drilled to the use of arms or practising military evolutions without lawful authority from the King or the lord lieutenant or two justices of the county are prohibited by law (u)

Unlawful  
drilling

A person who attends such a meeting for the purpose of drilling others commits a misdemeanour and is liable to penal servitude for not more than seven nor less than three years, or to imprisonment with or without hard labour for not more than two years, a person who attends such a meeting for the purpose of being drilled is liable to be fined and to be imprisoned for not more than two years (z)

The prosecution must be commenced within six months after the commission of the offence (y)

Any justice, or constable, or peace officer, or any person acting in the aid of such justice etc, may disperse any such meeting and arrest any persons present at or aiding any such meeting (z)

Drilling is not illegal, if it is merely to enable persons to march in a procession with ease and regularity (a)

(q) Unlawful Societies Act, 1799 (39 Geo 3, c 79), s 2

(r) Seditious Meetings Act, 1846 (9 & 10 Vict c 33), s 1

(s) Unlawful Societies Act, 1799 (39 Geo 3, c 79), s 8, Seditious Meetings Act, 1817 (57 Geo 3, c 19), s 25, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The accused may be proceeded against summarily, in which case the punishment is three months' imprisonment or a fine of £20 (*ibid*) These offences are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(t) Seditious Meetings Act, 1817 (57 Geo 3, c 19), s 28 This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(u) Unlawful Drilling Act, 1819 (60 Geo 3 & 1 Geo 4, c 1), s 1

(z) *Ibid*, s 1, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(y) Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo 4, c 1), s 7

(z) *Ibid*, s 2

(a) *R. v. Hunt* (1820), 1 State Tr (N. s.) 171, 446 As to the form of

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**quillity.**

Every person who makes or sells arms knowing that they are to be used for an unlawful purpose is guilty of a misdemeanour which is punishable by fine or imprisonment (b)

**SUB-SECT 6—Going Armed**

Going armed

**918** Everyone is by statute (c) guilty of a misdemeanour who comes before the King's justices or other his ministers during their office with force and arms, or brings force "in affray of the peace," or goes armed by night or day in any fair, market, or in the presence of the King's justices or other ministers, or elsewhere, in such a manner as to terrify the King's subjects (d)

The punishment is forfeiture of the arms carried and imprisonment at the King's pleasure (e)

A man who has been threatened is not justified in going armed in public under such circumstances as to terrify others. But it is no offence for persons to wear common weapons upon occasions in which it is the common practice to wear them, where there can be no suspicion of an intention to commit any act of violence or disturbance of the peace (f)

**SUB-SECT 7—Breach of the Peace**

Affray.

**919** If two or more persons fight in a public place to the terror of the King's subjects, this constitutes an affray and is a misdemeanour at common law, punishable with fine and imprisonment without hard labour (g). Fighting in a private place, or at some distance from the highway in a place where no others are present than those who are aiding and abetting, does not amount to an affray (h), but an assembly for such a purpose is unlawful, and the parties concerned may be convicted of assault, or of taking part in an unlawful assembly.

Duels

A duel fought in a public place is an affray, and, whether it be fought in public or in private, it is a misdemeanour at common law, even though no injuries are inflicted (i)

indictment in cases under this statute, see *Gagarty v R* (1849), 3 Cox, C C 306 (11)

(b) *R v Knowles* (1820), 1 State Tr (N S) 498, *R v Morris* (1820), *ibid* 522, 526

(c) Stat (1328) 2 Edw 3, c 3. The statute contains exceptions in favour of the King's servants and officers, and of those who are summoned upon a cry for arms to keep the peace. The offence of going armed to terrify the King's subjects is also a common law misdemeanour.

(d) *Knight's (Sir John) Case* (1686), 3 Mod Rep 117, *R v Duvhurst* (1820), 1 State Tr (N S) 529. The statute has in modern times been applied to a case of discharging firearms in a public street (*R v Meade* (1903), 19 T L R 540, WILLS J)

(e) Stat (1328) 2 Edw 3, c 3. The offence is, it seems, triable at quarter sessions.

(f) 3 Co Inst 160 *et seq*, 1 Hawk P C, c 28, ss 8, 9, Bill of Rights (1688) (1 Will & Mar, sess 2, c 2)

(g) *Termes de la Ley*, tit Affray, 1 Hawk P C, c 28, s 1. The word is from Fr. "*effray*," to put in fear. The indictment must allege that the fighting was in a public street or place (*R v O'Neill* (1871), 6 I R C L 1)

(h) *R v Hunt* (1845), 1 Cox, C C 177

(i) 3 Co Inst 107, 1 Hawk P C, c 28, s 21, Fost 297. See also, as to duelling, p. 578, *post*

Quarrelsome and threatening words will not in themselves amount to an affray (*k*).

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quillity.

Challenges.

**920** It is a common law misdemeanour verbally or in writing either to challenge a person to fight or to endeavour to provoke a person to give such a challenge (*l*) No amount of provocation will excuse the offender (*m*) If a challenge, or a letter inviting to a challenge, be written and sent, it is immaterial that it was not received by the person to whom it was addressed (*n*)

**921** The above offences are triable at quarter sessions (*o*), and are punishable with fine and imprisonment without hard labour (*p*). Punishment.

#### SUB-SECT. 8.—*Unlawful Assemblies*

**922** An unlawful assembly (*q*) is an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, lawful or unlawful, in such a manner as to give him and courageous persons (*r*) in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it (*s*) To take part in an unlawful assembly is a common law misdemeanour, punishable with fine and imprisonment without hard labour (*t*) Unlawful  
assembly.

**923** An assembly which was originally lawful may become unlawful, if a proposal is made at such meeting to do an act of violence to the disturbance of the public peace and such proposal is acted upon (*u*) If persons are assembled for an innocent purpose and with no intention of carrying it out unlawfully, as, e.g., for the purpose of a peaceable street procession, then meeting is not rendered unlawful by the fact that they may have good reason to believe that their proceedings will be opposed and a breach of the peace be committed by those opposing them (*v*) But persons so assembled are guilty of a misdemeanour, if they have determined to carry out their purpose by themselves using force (*w*) What consti-  
tutes.

(*k*) 1 Hawk P C, c 28, s 2

(*l*) 1 Hawk P C, c 28, s 3, Stephen, Digest Criminal Law, 6th ed., 51, *R. v Phillips* (1805), 6 East, 464

(*m*) *R v Rice* (1803), 3 East, 581

(*n*) *R v Williams* (1810), 2 Camp 506

(*o*) Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1.

(*p*) See p 410, *ante*

(*q*) The above definition is taken from Stephen, Digest Criminal Law, 6th ed., 55, see also 1 Hawk P C, c 28, ss 9, 10

(*r*) *R v Vincent* (1839), 9 C & P 91

(*s*) *R v Hunt* (1820), 3 B & Ald 666, *Redford v Birley* (1822), 1 State Tr. (N S) 1071, 1217, n, 1227, *R v Graham and Burns* (1888), 16 Cox, C C 420

(*t*) This offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1) The power to give hard labour in case of a conviction for a riot does not, it seems, extend to a conviction for an unlawful assembly (Hard Labour Act, 1822 (3 Geo 4, c 114))

(*u*) 1 Hawk P C, c 28, s 8, *R v Graham and Burns*, *supra*, at p 434

(*v*) *Beatty v Grilbanks* (1852), 9 Q. B D 308, *R v Clarkson* (1892), 17 Cox, C C 483, C C R

(*w*) *R v Graham and Burns*, *supra*, at p. 433.

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Defence of a  
man's house  
**Prize-**  
**fighting**

A man may gather together his friends and servants to defend his own house against persons threatening to enter it unlawfully (x), but it is unlawful for him to assemble his friends for the defence of his person against those who threaten to beat him outside his house, as when he is on his way to market, for it is then his duty to appeal to the protection of the law (a)

**924.** Prize-fighting is illegal, and a meeting for the purpose of holding a prize fight is an unlawful assembly, and all persons present for the purpose of encouraging the principals to fight may be convicted of the offence of taking part in an unlawful assembly or of an assault (b)

Taking part  
in unlawful  
assembly

**925** All persons who convene or who take part in the proceedings of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without taking any part in the proceedings are not guilty of that offence (c), even though such persons possess the power of stopping the assembly and fail to exercise such power (d)

Meetings  
within a  
mile of  
Westminster  
Hall

**926** Meetings are unlawful which consist of more than fifty persons assembled in any street, square, or open place within one mile from Westminster Hall for the purpose or on the pretext of considering or preparing any petition, complaint, remonstrance, declaration, or other address to the King or to both Houses or either House of Parliament for alteration of matters in Church or State or which are convened for any day on which either House of Parliament shall meet and sit, or shall be summoned, adjourned, or prorogued to meet or sit, or for any day on which the High Court of Justice meets at the Royal Courts of Justice (e)

Meetings for the election of members of Parliament, and of persons attending upon the business of Parliament or at the High Court, are not unlawful (f)

Tu multuous  
petitioning

**927** Anyone is by statute (g) guilty of a misdemeanour who repairs to the King, or to both or either of the Houses of Parliament, upon pretence of presenting or delivering any petition etc.,

(x) 1 Hawk P C, c 28, s 10, but apparently he must not do so for the purpose of defending his close (*R v Bangor (Bishop)* (1796), 1 Russell on Crimes, 6th ed 370)

(a) 1 Hale, P C 547, Y B 21 Hen 7, 394, 1 Hawk P C, c 28, s 10, *R v Sney* (1707), 11 Mod Rep 115, 116. This principle does not apply to cases of sudden emergency in which the bystanders are entitled to intervene to prevent an assault (1 Hawk P C, c 28, ss. 11, 12)

(b) *R v Billingham* (1825), 2 C & P 234, see the observations of CAVE, J<sup>c</sup>, on this case in *R v Coney* (1882), 8 Q B D 534, 542. As to prize fighting, see also p 582, *post*

(c) *R v Rankin* (1848), 6 State Tr (N s) 711, 789

(d) *R v Atkinson* (1869), 11 Cox, C C 330, *per* KELLY, C B. But their mere presence will in the absence of explanation probably afford some evidence of participation (*R v Coney*, *supra*)

(e) Seditious Meetings Act, 1817 (57 Geo 3, c 19), s 23

(f) *Ibid*. As to disturbance of public meetings, see Public Meeting Act, 1908 (8 Edw 7, c 66)

(g) 13 Car 2, stat 1, c 5, s. 1. See *R v Gordon (Lord George)* (1781), 2 Doug. (K B) 591, 592.

accompanied with an excessive number of persons, or at one time with more than ten persons

The offenders must be prosecuted within six months of the offences being committed. The evidence of two credible witnesses is required (*h*)

The penalty for this offence is £100 and three months' imprisonment (*i*)

It is not, however, unlawful for persons not exceeding ten in number to present any public or private complaint to any member of Parliament, or to the King, for any remedy to be had thereon, nor is it unlawful for members of Parliament to present any address to the King during the sitting of Parliament (*h*)

#### SUB-SECT 9—*Rout and Riot*

**928** A rout is a disturbance of the peace by persons assembling together with an intention to do anything which, if it be executed, will make them rioters, and who actually make a motion towards the execution of it (*l*). A rout in itself constitutes a common law misdemeanour which is punishable by fine and imprisonment, but where the intention is in any degree effected, it is usually prosecuted as a riot

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quillity.

**929** A riot is a tumultuous disturbance of the peace by three or more persons (*m*), who assemble together, without lawful authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature (*n*), and who afterwards actually begin or execute the same in a violent and turbulent manner to the terror of the people (*o*). It is immaterial whether the enterprise intended was of itself lawful or unlawful (*p*), and it is sufficient if only one person was put in fear (*q*)

If persons meet on a lawful occasion but suddenly quarrel and fight, this is not a riot, but is an affray, of which only those are guilty who actually engage in it. If the persons so present form themselves into parties upon the dispute arising, with promises of mutual assistance, and then make an affray, they are guilty of a riot

(*h*) 13 Car 2, stat 1, c 5 s 1. By virtue of this statute the offence is triable at quarter sessions, but see Quarter Sessions Act, 1817 (5 & 6 Vict c 38), s 1

(*i*) *Ibid*

(*h*) *Ibid*

(*l*) 1 Hawk P C, c 28, s 8, Stephen, Digest Criminal Law, 6th ed, 56. As to the duties and powers of justices and others in suppressing unlawful assemblies and riots, see p 472, *post*. A rout is triable at quarter sessions

(*m*) *R v Scott* (1761), 3 Burr 1262

(*n*) If the enterprise is of a public nature, the offence amounts to treason (p 453, *ante*)

(*o*) *R v Hughes* (1830), 4 C & P 373, *I veld v Metropolitan Police (Reverend)*, [1907] 2 K B 853

(*p*) 1 Hawk P C, c 28, s 1, 7, Stephen, Digest Criminal Law, *ib*, *R v Graham and Burns* (1888), 16 Cox, C C 420, 427

(*q*) *R v Phillips* (1842), 2 Mood C C 252. It would seem that where in the course of the tumultuous assembly an act of violence is done, it is not necessary to allege in the indictment that the proceeding was *in terrorem populi* (*R v Soleu* (1707), 11 Mod Rep 115, *per Holt*, C J, at p 117).

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**Public**  
**Tran-**  
**quillity.**

If persons are gathered on an innocent occasion, and a sudden proposal is made that they should go in a body to do any act of violence, *e g*, to pull down a house, and such motion is agreed to and executed, this constitutes a riot (*r*). Where the meeting is for the purpose of enforcing a claim of right, *as, e g*, by pulling down an alleged unlawful inclosure, this does not amount to a riot, provided no excessive number of persons are present and there is no use of threatening words or gestures or of more violence than is necessary for the purpose (*s*).

All persons who take part in a riot are guilty of a misdemeanour at common law, which is punishable by fine and imprisonment with or without hard labour (*t*).

**Riot Act.**

**930.** If any persons to the number of twelve or more are unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, it is the duty of the justices of the peace, or the sheriff or under-sheriff of the county, or the mayor, bailiff, or other head officer, or justices of the peace of any city or town corporate where such assembly is gathered, to go to the place where the rioters are assembled and make a proclamation in a prescribed form ordering them to disperse (*v*). If persons to the number of twelve or more unlawfully, riotously, and tumultuously remain or continue together for one hour after such proclamation is made (*a*), they are guilty of felony (*b*). An indictment based on the Riot Act need not allege that the assembly was to the public terror (*c*).

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

(*r*) 1 Hawk P C, c 28, s 3, Stephen, Digest Criminal Law, 6th ed, 56, *Anon* (1703), 6 Mod Rep 43

(*s*) *R v Soley* (1707), 11 Mod Rep 115, *Clifford v Brandon* (1810), 2 Camp 358, 369, 370

(*t*) Hard Labour Act, 1822 (3 Geo 4, c 114) The offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(*v*) Riot Act, 1714 (1 Geo 1, stat 2, c 5) The following is the form prescribed by s 2 of that Act —“Our sovereign lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business upon the pains contained in the Act made in the first year of King George for preventing tumults and riotous assemblies God save the King” The same section provides that the proclamation is to be made amongst the rioters, or as near to them as the justice can safely come, with a loud voice, and after he has commanded silence while the proclamation is made The words of the statutory proclamation must be read verbatim (*R v Child* (1830), 4 C & P 442, where a prosecution for felony based on the Riot Act failed, because the words “God save the King” were omitted from the proclamation)

(*a*) If the proclamation is made more than once, the hour will be computed from the time of the first reading (*R v Woolcock* (1833), 5 C & P 516) The fact that the accused has absented himself for a minute or two is no defence, if he substantially continued making part of the assembly for the hour (*R v. James* (1831), 1 Russell on Crimes, 573—4)

(*b*) Riot Act, 1714 (1 Geo 1, stat 2, c 5), s 1.

(*c*) *R v. James* (1831) 5 C & P 153

(*d*) Punishment of Offences Act, 1837 (7 Will 4 & 1 Vict c 91), s. 1;

**931** A person who wilfully and knowingly opposes, obstructs, hinders, or hurts any person beginning or going to make such proclamation whereby such proclamation is not made, is, with the persons who remain for one hour after knowledge of such obstruction, guilty of felony and punishable in the same way (e)

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Offences  
against  
Public  
Tran-  
quillity.

**932** Proceedings for offences under this statute must be commenced within twelve months after the commission of the offence (f)

Hindering  
proclamation,  
Proceedings.

A riot is none the less a riot because the statutory proclamation has not been made. If the proclamation is not made, the common law offence remains (g)

**933** All persons are by statute (h) guilty of felony who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish or begin to demolish, pull down and destroy any church or other place of divine worship or any house or other building, or any machinery employed in any manufacture or in mining

Riotous  
demolition of  
buildings etc.

**934** Seamen, keelmen, casters, ship carpenters, or other persons are by statute (i) guilty of a misdemeanour who, being riotously assembled together to the number of three or more, unlawfully and with force prevent or obstruct the loading, unloading, sailing or navigating of any ship or other vessel, or unlawfully board a ship to prevent or obstruct the loading, unloading, sailing or navigating thereof

Riotously  
preventing  
the loading  
etc. of a ship.

The punishment for this offence upon conviction is imprisonment with or without hard labour for not more than twelve months (a)

The prosecution must be commenced within twelve months after the commission of the offence (b)

**935** Any private person may lawfully suppress riots and may make use of weapons for that purpose. Officers of justice are entitled to call upon private persons to assist them in suppressing a riot, and if such persons refuse, they are liable on indictment to fine and imprisonment (c)

Suppression  
of riots

Penal Servitude Act, 1857 (20 & 21 Vict c 3), s. 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s. 1)

(e) Riot Act, 1714 (1 Geo 1, stat 2, c 5), s. 5

(f) *Ibid*, s. 8

(g) *R v Hursey* (1833), 6 C. & P. 81

(h) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s. 11

(i) Shipping Offences Act, 1793 (33 Geo 3, c 67), ss 1—8. A person who offends the second time is guilty of a felony, and is liable to penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*ibid*, s. 3, Penal Servitude Act 1891 (54 & 55 Vict c 69) s. 1). The offence is triable at quarter sessions (Shipping Offences Act, 1793 (33 Geo 3 c 67), ss 1, 3)

(a) Shipping Offences Act, 1793 (33 Geo 3, c 67), s. 1

(b) *Ibid*, s. 8

(c) 1 Hawk P. C., c. 28, s. 11, *R v Penney* (1832), 5 C. & P. 261, 263; *R v Brown* (1841), Car. & M. 314, *R v Sherlock* (1866), L. R. 1 C. C. R. 20. The indictment may be preferred at quarter sessions

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**quillity.**

Power is given by statute (*d*) to justices of the peace and the sheriff or under-sheriff to arrest rioters, with the *posse comitatus* if need be, and to record what they shall find to have been done in their presence against the law, and by such record the offenders may be convicted in the same manner and form as under the Statute of Forcible Entries (*e*) It is the duty of sheriffs, under-sheriffs, justices of the peace, and constables to do all that in them lies to suppress riots, and if they negligently fail to take proper steps for that purpose, they are punishable by fine or imprisonment (*f*)

A peace officer is required to act as a man of ordinary prudence, firmness, and activity would act A reasonable fear may excuse him, if it is a fear arising from such danger as would affect a firm man He is entitled to call the military, as also any other citizens, to his assistance, but he is not bound to go with them (*g*)

A justice of the peace is only justified in dispersing a meeting which is in fact unlawful, it is not sufficient that he had reasonable grounds for believing, and did in fact believe, it to be unlawful, unless he also had reasonable grounds to believe that the peace would be broken if the meeting were not dispersed (*h*)

**SUB SECT 10 — Forcible Entry and Detainer**

**Forcible**  
**entry**

**936** Any person is guilty of a misdemeanour both at common law (*e*) and by statute (*g*) who enters forcibly upon any lands or tenements without due warrant of law (*h*)

In order to constitute the offence it is not necessary that there should be actual violence to the person of anyone It is sufficient, if there is any kind of violence in the manner of entry, as by breaking open the doors of a house, whether any person be therein or not, or by threats to those in possession giving them just cause to fear that bodily hurt will be done to them, if they do not give up possession, or by going to the premises armed or with such an

(*d*) (1411) 13 Hen 4 c 7 s 1 The statute also contains provisions for the conviction after due proclamation, of rioters in their absence, see also stat (1393) 17 Ric 2, c 8

(*e*) See *infra*

(*f*) (1414) 2 Hen 5, stat 1, c 8, *R v Kennett* (1781), 5 C & P 282 n., *R v Pinney* (1832), 5 C & P 254, *R v Neale* (1839), 9 C & P 131, see also *R v Graham and Burns* (1888), 16 Cox, C C 420, 430 The offence is triable at quarter sessions

(*g*) *Ibid*

(*h*) *O'Kelly v Harvey* (1883), 15 Cox, C C 435, C A compare *Beatty v Gillbank* (1882), 9 Q B D 308

(*i*) *R v Blake* (1765), 3 Burr 1731 *R v Wilson* (1799), 8 Term Rep 357, see, however, 1 Hawk P C, c 28 s 2

(*j*) Stat (1381) 5 Ric 2 stat 1, c 7, which forbids that any man should make any entry into any lands or tenements except in case where entry is given by the law, and in such case not with strong hand nor with multitude of people, but only in peaceable and easy manner, see also stats 15 Ric 2, c 2 (1391), 4 Hen 4, c 8 (1402), and 8 Hen 6, c 9 (1429) A sheriff or other officer who is acting in execution of a judgment of a court of law ordering delivery of possession of property is entitled to use force, if he is resisted in the execution of the judgment (see *Sheriffs Act*, 1887 (50 & 51 Vict c 55), s 8 (2)) Resistance to the sheriff in such circumstances is a statutory misdemeanour, punishable with fine and imprisonment (*ibid*)

(*k*) 1 Hawk P C, c. 28 It is doubtful whether an infant can be guilty of this offence (see note (*g*) on p 240, *ante*)



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against  
Public  
Tran-  
quillity.

Nature of  
entry.

unusual number of persons as plainly to show that force will be resorted to (l) A mere trespass will not support an indictment for forcible entry There must be proof of either such force, or such show of force, as is calculated to prevent any resistance (m).

**937** Entry obtained through an unclosed window or by opening a door with a key, or by means of threats to despoil a man's goods (n), or by enticing the owner out of possession or excluding him when he is out (o), is not a forcible entry

A person is not guilty of forcible entry who, although pretending title to land, merely passes over it, with or without attendants armed or unarmed, on his way to church, or to market, or for such like purpose, providing he does no act which either expressly or impliedly amounts to a claim to the lands (p) If a man enters peaceably into a house, but turns the occupant out of possession by force, this may be a forcible entry (q) If a man enters with force to distain for rent in arrear, this is a forcible entry, for although he does not claim the land itself, he claims a right out of it (r)

A lessee who with force resists a distress for rent, or who forestalls (s) or rescues the distress, is guilty of a forcible detainer (t)

The offence of forcible entry may be committed with regard to ecclesiastical possessions, as churches, vicarages, or tithes (u)

There can be no forcible entry upon an easement, such as a right of way (a)

**938** A forcible entry may be committed by one or by many If several persons come together to make an unlawful entry on premises, and all of them except one enter in a peaceable manner, and that one only uses force, it is a forcible entry in them all, as they went in company to do an unlawful act (b)

Number of  
persons

**939** It is no defence to a person who has forcibly entered on land in the possession of another that he was entitled to possession or had a legal right of entry (c) But a mere trespasser cannot by

Trespassers.

(l) 1 Hawk P C, c 28, ss 26, 27, Stephen, Digest Criminal Law, 6th ed, 61, *Milnes v Maclean* (1825), 2 C & P 17

(m) *R v Blake* (1765), 3 Burr 1731, *R v Wilson* (1799), 8 Term Rep 357, *R v Smyth* (1832), 5 C & P 201

(n) 1 Hawk P C, c 28, ss 26, 29

(o) Com Dig tit Forceable Entry, A, 3

(p) *Ibid*, 1 Hawk P C, c 28, ss 20, 21

(q) Bac Abr tit Forceable Entry and Detainer, B, *Edwick v Hawkes* (1881), 18 Ch D 199, 210 But see Cole on Larcement, pp 689, 690

(r) Bac Abr, *supra*

(s) *I.e.*, stops the landlord's way with force and arms, see Co Litt 161 b

(t) Com Dig tit Forceable Entry, B (1), p 343 Merely shutting the door would not be a forcible resistance (*ibid* Forceable Entry, 343)

(u) *Ibid*, C, 1 Hawk P C, c 28, s 51

(a) *R v Holmes* (1670), 1 Mod Rep 73

(b) Bac Abr tit Forceable Entry and Detainer, B

(c) *Newton v Harland* (1840), 1 Man & Gr 644, *Edwick v Hawkes* (1881), 18 Ch D 199, *Taunton v Costar* (1797), 7 Term Rep 431, 432 *R v Child* (1846), 2 Cox, C C 102, *R v Studd* (1866), 14 L T 633, C C R, *Lovell v Telford* (1876), 1 App Cas 414 A licence contained in a lease authorising the lessor to eject the lessee forcibly for breach of covenant or at the end of the term is void as being a licence to commit an act forbidden by the Statute of Forcible Entry (*Edwick v Hawkes*, *supra*)

**SECT. 2**  
**Offences**  
**against**  
**Public**  
**Tran-**  
**quillity.**

the very act of trespass immediately, and without acquiescence by the rightful possessor, give himself possession in any legal sense as against the person whom he ejects (*d*), and the latter is entitled to use force in turning him out, provided he does him no personal injury (*e*). A person who claims not the land, but the mere custody of it as against the defendant, may be forcibly expelled by the latter (*f*). A joint tenant or a tenant in common may be indicted for the forcible expulsion of his co-tenant (*g*). A wife may be indicted for a forcible entry upon land in the possession of her husband (*h*).

The punishment for this offence is imprisonment without hard labour, and fine (*i*).

**Forcible**  
**detainer**

**940** A person is by common law and by statute (*j*) guilty of a misdemeanour who, except in the cases hereafter mentioned, maintains by force the possession of lands or tenements, whether such possession was lawful in its origin or not.

The same circumstances of violence or terror which make an entry forcible make a detainer forcible also; but a bare refusal to leave a house and a continuing therein do not amount to a forcible detainer (*l*). The forcible continuance in possession by a tenant whose term has expired, or by a mortgagor after the mortgagee is entitled to take possession, or the forcible resistance by a tenant to a distress for rent, is a forcible detainer (*l*). Those who keep possession with force any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued in possession for three years, are not within the statute (*m*). And a man may lawfully defend possession of his dwelling-house by force against a wrongful and forcible intruder (*n*).

**Remedy**

**941** The usual mode of prosecution is by indictment, but the justices have by statute (*o*) a summary jurisdiction, which, however, is now rarely exercised, and which, therefore, the court will not by mandamus compel them to exercise (*p*). The offence

(*d*) *Browne v Dawson* (1840), 12 Ad & El 621 *Collins v Thomas* (1859), 1 F. & F 416

(*e*) *Scott v Matthew Brown & Co, Ltd* (1884), 51 I T 746, and see *Beddall v. Martland* (1881), 17 Ch D 174, 188

(*f*) 1 Hawk P C, c 28, s 32

(*g*) *Ibid.*, s 33

(*h*) *R v Smyth* (1832), 5 C & P 201

(*i*) Stat (1881) 5 Ric 2, stat. 1, c 7. There is no limit either to the period of imprisonment or the amount of the fine. The offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s. 1, Dickinson's Quarter Sessions, 6th ed 370)

(*j*) 15 Ric 2, c 2 (1391), 8 Hen 6, c 9 (1429). The offence is triable at quarter sessions.

(*k*) 1 Hawk P C, c 28, s 30

(*l*) Com Dig tit Forcible Entry, B, 1, and see *Lowe v Telford*, *supra*.

(*m*) Stat 8 Hen 6, c 9 (1429), stat 31 Eliz c 11 (1588)

(*n*) 1 Hale, P C 486

(*o*) Stat, 15 Ric 2, c 2 (1391), stat 8 Hen 6, c 9 (1429)

(*p*) *Ex parte Davy* (1842), 2 Dowd (N S) 24. See further as to the summary jurisdiction, Com Dig tit Forcible Entry, D, *R v Oakley* (1832), 4 B & Ad 307, in which it was held that justices have only such summary jurisdiction in a case of forcible detainer, if the entry of the person detaining was unlawful, *R v*.

is triable at quarter sessions, and the punishment is fine and imprisonment

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Offences  
against  
Public  
Tran-  
quillity.

**942** The court in which the proceedings take place may award restitution of the lands which have been forcibly entered or detained (q), but no restitution can be ordered, where the person indicted has been in quiet possession for three years before the date of the indictment (r)

Restitution.

The writ of restitution may at the discretion of the judge be awarded immediately upon the finding of the bill of indictment by the grand jury (s)

#### SUB-SECT 11—*Disturbing Public Worship.*

**943** A person is by statute (t) guilty of a misdemeanour (1) who of his own power and authority maliciously or contemptuously molests, disturbs, or troubles any preacher, duly licensed or otherwise lawfully authorised, in his sermon, or any parson, vicar, or priest in performing divine service or celebrating the sacraments of the Church, or (2) who unlawfully and maliciously of his own authority pulls down or defaces any altar, crucifix, or cross in any church or churchyard. This offence is punishable by committal to prison by justices for three months and to the next quarter sessions, where, if the offender repents, he is to be discharged upon

Disturbing  
public  
worship.

Punishment.

*Wilson* (1835), 3 Ad & El 617, *Attwood v Joliffe* (1818), 3 New Sess Cas 116 As to mandamus, see title CROWN PRACITICE

(q) 8 Hen 6, c 9 (1429), 21 Jac 1, c 15 (1623)

(r) 31 Eliz c 11 (1586)

(s) *R v Harland* (1814), 8 Ad & El 826 If a writ of restitution is so granted, and the defendant is afterwards acquitted on the indictment or the indictment is quashed, a *superedens* may be obtained either from the justices who granted the writ of restitution or from the King's Bench Division of the High Court. The granting of a writ of *certiorari* by the High Court itself operates as a *superedens*, if the writ of restitution has not been executed. If possession has been obtained by the prosecutor under the writ of restitution, the King's Bench Division will, if justice requires it, grant a writ of re restitution to the defendant (1 Hawk P C, c 28, ss 61—66 Bac Abr Forcible Entry and Detainer, G). The indictment may be removed by *certiorari* into the High Court, and after the conviction of the defendant an application may be made to that court for the writ of restitution, to which it would appear that the prosecutor is entitled as of right (see *R v Williams* (1829), 4 Man & Ry (n d) 471). For the purpose of applying for the writ of restitution the indictment should allege not only that the prosecutor was in possession of the land, but also that he was seized of it (*R v Hoare* (1817), 6 M & S 266)

(t) Stat (1553) 1 Mar sess 2, c 3, s 1. This Act applies to the present services of the Established Church (*Preswick v Rooksbay* (1613), 2 Bulst 47, *Moone's Case* (1682), T Jo 159). The service must be actually proceeding at the time (*Williams v Glenister* (1824), 2 B & C 699). To disturb a priest of the Established Church in the performance of divine worship appears to be a misdemeanour at common law (*R v Parry* (1686), *Tremaine's Pleas of the Crown*, 239, and see *Wilson v Greaves* (1757), 1 Burr 240, 243, *R v Cherr* (1825), 4 B & C 902). By the Act of Uniformity (1 Eliz c 2), s 8, pecuniary penalties are imposed upon persons who by deed or open threatenings compel a minister in any cathedral, parish church, chapel, or other place to sing or say any prayer other than that contained in the Prayer Book, or who by the same means unlawfully interrupt such a minister in singing or saying common prayer. The punishment for a third offence is the forfeiture of all goods and chattels and imprisonment for life.

**SECT 2**  
**Offences**  
**against**  
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**quillity.**

**Disturbing**  
**religious**  
**meetings**

**Obstructing**  
**a clergyman.**

giving security for good behaviour, or otherwise to be committed, until he does repent (a)

**944** The churches and meeting-houses of all religious bodies are now equally protected. A person is by statute guilty of a misdemeanour who wilfully and maliciously or contemptuously (1) disquiets or disturbs any meeting or congregation of persons assembled for religious worship, or (2) disturbs or molests any preacher or person there officiating, or any person present (b)

The punishment for this offence on conviction at quarter sessions (c) is a fine of £40 (d)

**945** A person is by statute (e) guilty of a misdemeanour (1) who by threats or force obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister from celebrating divine service or otherwise officiating in any church, meeting-house, or other place of divine worship, or in the lawful burial of the dead in any churchyard or other burial place, or (2) offers violence to, or arrests upon any civil process, any clergyman or other minister while so engaged, or about to be engaged, in such duties, or while going to or returning from the performance thereof

The punishment for this offence is imprisonment for two years, with or without hard labour (f)

(a) An offender against this statute may be arrested "immediately and forth with" by any constable, churchwarden or any other officer or any other person present when the offence is committed (1 Mar sess 2, c 3, s 1)

(b) Places of Religious Worship Act, 1812 (52 Geo 3 c 155), s 12

(c) The indictment must be found at quarter sessions, but may be removed by *certiorari* to the King's Bench Division of the High Court and tried there (*R v Wadley* (1816) 4 M & S 508)

(d) Places of Religious Worship Act, 1812 (52 Geo 3, c 155) s 12. The assemblies for religious worship allowed by this Act, and which alone were protected, were meetings of Protestants at places duly certified and registered in the manner prescribed (s 2), but Quakers' meetings were not included. By the Religious Disabilities Act, 1846 (9 & 10 Vict c 59), s 4, all laws then in force against the disturbing of any meeting of persons assembled for religious worship permitted by any former Acts were applied to all meetings whatsoever of persons lawfully assembled for that purpose. By the Places of Worship Registration Act, 1855 (18 & 19 Vict c 81) s 2, places of public worship of Protestant Dissenters and of Roman Catholics are required to be certified to the Registrar-General, this Act is applied to Jewish places of worship by the Liberty of Religious Worship Act, 1855 (18 & 19 Vict c 86), s 2. The offence of disturbing a religious service is also known as brawling, and may be prosecuted under the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict c 32), s 2, which provides that any person who is guilty of riotous violent or indecent behaviour in any church or chapel of the Church of England, or in any chapel of any religious denomination, or in any place of worship duly certified under the Places of Worship Registration Act, 1855 (18 & 19 Vict c 81), whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, or who molests or disturbs any clergyman or minister authorised to minister therein shall be punishable on summary conviction by a fine of £5, or imprisonment, without fine, for two months. The offence can be committed by a clergyman who acts in a violent or indecent way in his own church or churchyard (*Vallancey v Fletcher*, [1897] 1 Q B 265). It is no defence that the defendant in what he did was only asserting a *bonâ fide* claim of right (*Asher v Calcraft* (1887), 18 Q B D. 607, see also *Kemst v St Paul's (Dean and Chapter)*, [1905] 2 K B 249)

(e) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 36

(f) *Ibid.* The defendant may also be fined and ordered to find sureties for

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**Offences**  
**against**  
**Public**  
**Tran-**  
**quillity.**

Violent  
behaviour at  
a burial.

**946** Every person is by statute guilty of a misdemeanour punishable by fine and imprisonment (1) who behaves in a riotous, violent, or indecent manner at any burial to which the Burial Laws Amendment Act, 1880 (*g*), applies, or (2) who wilfully obstructs such burial or any service thereat, or (3) who in a graveyard delivers any address not being part of or incidental to a religious service permitted by that Act, or not permitted by any lawful authority, or (4) who under colour of any religious service or otherwise in any such graveyard wilfully endeavours to bring into contempt or obloquy the Christian religion, or the belief or worship of any denomination of Christians, or the members or minister of any such denomination, or any other person (*h*)

**SUB-SECT. 12 — Offences by Jesuits etc**

**947** A person is by statute (*e*) guilty of a misdemeanour who, being a Jesuit or member of any other religious order or society of the Church of Rome, comes within the realm without a licence of a Secretary of State. The punishment for this offence is banishment for life (*i*)

Jesuits etc,  
coming  
within the  
realm.

Every such person is by statute (*h*) guilty of a misdemeanour who within the United Kingdom admits any person to be a regular ecclesiastic or member of any such order or society, or administers any vow or engagement purporting to bind the person taking it to the rules of any such order or society. The punishment for this offence is fine and imprisonment without hard labour.

Admitting a  
person to be  
a member of  
a religious  
order.

Any person so admitted commits a misdemeanour, and is liable to banishment for life (*h*)

The above provisions do not in any way affect religious orders consisting of females bound by religious or monastic vows (*l*)

good behaviour. The offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 VICT c 38), s 1)

(*g*) Burial Laws Amendment Act, 1880 (43 & 44 VICT 41), s 7, see also s 8, and title BURIAL AND CREMATION, Vol III, p 426

(*h*) *Ibid*. The offence is triable at quarter sessions

(*i*) Roman Catholic Relief Act, 1829 (10 GEO 4, c 7), ss 29—31. An offender who has been sentenced to banishment and is at large in the United Kingdom after the end of three months from the sentence is liable to penal servitude for life or for not less than three years, or to imprisonment with or without hard labour for not more than two years (*ibid*, s 36). As to not obeying a sentence of banishment under the Act, see ss 3, 36. It is doubtful whether this offence can be tried at quarter sessions (see Quarter Sessions Act, 1842 (5 & 6 VICT c 38), s 1)

(*j*) *Ibid*, s 33

(*k*) *Ibid*, s 34. See note (*i*), *supra*

(*l*) *Ibid*, s 37. There has been no conviction under the provisions of this statute (see *R v Kennedy* (1902), 86 L T 703). Any person can institute a prosecution under this statute (*R v Kennedy, supra*). The Act also imposes pecuniary penalties upon any person who without being authorised by law assumes the name of archbishop of any province, bishop of any bishopric, or dean of any deanery in England or Ireland (*ibid*, s 24), and upon any Roman Catholic ecclesiastic, or Jesuit, or monk of any other religious order of the Church of Rome who exercises any of the rites or ceremonies of the Roman Catholic religion or wears the habits of his order, except within the usual place of worship of the Roman Catholic religion or in private houses (*ibid*, s 28), but proceedings to recover these penalties can only be instituted by the Attorney-General (*ibid*, s 38)

In September, 1908, the Government, in the interest of order, requested that at

**SECT 3**  
**Offences**  
**by and in**  
**respect of**  
**Public**  
**Officers.**

Official  
 Secrets Act,  
 1889

Unlawful  
 obtaining or  
 communicating  
 official  
 secrets.

**SECT 3—Offences by and in respect of Public Officers.**

**SUB SECT 1—Disclosure of Official Information**

**948** A person is by statute (*m*) guilty of a misdemeanour who (1) for the purpose of wrongfully obtaining information enters any part of a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to the King in which part such person is not entitled to be, or (2) for the like purpose, when lawfully or unlawfully in any such place, either obtains any document, sketch, plan, model, or knowledge of anything which he is not entitled to obtain, or takes without lawful authority any sketch or plan, or (3) for the like purpose, when outside any fortress, arsenal, factory, dockyard, or camp, takes or attempts to take without authority any sketch or plan thereof, or (4), knowingly having possession of or control over any such document, sketch, plan, model, or knowledge obtained by means of an offence against the Official Secrets Act, 1869, wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom it ought not in the interest of the State to be communicated at that time, or (5), having been intrusted in confidence by an officer under the King with any such document, sketch, plan, model, or information relating to any such place or to the naval or military affairs of His Majesty, wilfully and in breach of such confidence communicates the same, when in the interest of the State it ought not to be communicated

The punishment for any of the above offences is imprisonment with or without hard labour for one year, or a fine, or both (*n*)

Communica-  
 tion of  
 information

**949** A person is by statute (*o*) guilty of a misdemeanour, punishable in the same way, who, having possession of any such document, sketch, plan, model, or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to His Majesty, or to His Majesty's naval or military affairs, in whatever manner the same has been obtained, wilfully communicates it as aforesaid.

Communica-  
 tion of  
 information  
 to foreign  
 states.

**950** A person is by statute guilty of a felony who commits any of the above-mentioned offences (1) intending to communicate to a foreign State any information so obtained by or intrusted to him; or (2) if he communicates the same to any agent of a foreign State (*p*)

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*q*)

a procession contemplated in connection with the Eucharistic Congress in London, Roman Catholic vestments should not be worn or any Roman Catholic religious rites practised in the streets, and the wearing of the vestments and the carrying of the host in the streets were consequently abandoned (Annual Register, 1908, p. 196)

(*m*) Official Secrets Act, 1889 (52 & 53 Vict c 52), s. 1 (1).

(*n*) *Ibid.*

(*o*) *Ibid.*, s. 1 (2)

(*p*) *Ibid.*, s. 1 (3)

(*q*) *Ibid.* Penal Servitude Act, 1891 (54 & 55 Vict c. 69), s. 1.

**951** A person who by means of his holding or having held an office under the King has lawfully or unlawfully obtained possession of or control over any document, plan, or model or acquired any information, and who at any time corruptly or contrary to his official duty attempts to communicate such document etc. to any person to whom in the public interest it ought not to be then communicated, is guilty of a breach of official trust (r)

**SECT 3**  
**Offences**  
**by and in**  
**respect of**  
**Public**  
**Officers.**

Communica-  
tion by  
officer

If such communication is attempted to be made to a foreign State the offence is a felony, and the punishment is penal servitude for life, or for not less than three years or imprisonment with or without hard labour for not more than two years. In any other case the offence is a misdemeanour, and the punishment is imprisonment with or without hard labour for a year or a fine, or both (s)

**952** This provision applies to a person holding a contract with any department of the Government or with the holder of any office under the King as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person holding such a contract who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were holders of an office under the King (t)

Government  
contractor

**953** Any person who incites another person to commit an offence under the Official Secrets Act, 1889 (u), is guilty of a misdemeanour, and on conviction is liable to the same punishment as if he had committed the offence (a)

Inciting  
others to  
commit  
offence

The Official Secrets Act, 1889 (b), applies to all acts committed in any part of the King's dominions and to acts committed by British officers or subjects elsewhere (b)

Intention of  
British officers  
or subjects  
elsewhere

#### SUB SECT 2.—Extortion

**954** A public officer is guilty of extortion who from an improper motive and under colour of office, takes from any person any money or valuable thing which is not due from such person at the time when it is taken (c)

What is  
extortion

Extortion is a common law misdemeanour, punishable by fine, or imprisonment without hard labour, and removal from office (d), and is triable at quarter sessions (e)

**955** To constitute the offence of extortion there must be a guilty mind, i.e., an intention to obtain some payment or advantage

(r) Official Secrets Act, 1889 (52 & 53 Vict c 52), s 2 (1)

(s) *Ibid*, s 2 (2), Penal Servitude Act, 1891 (54 & 55 Vict c. 69), s 1.

(t) Official Secrets Act, 1889 (52 & 53 Vict c 52), s 2 (3)

(u) 52 & 53 Vict. c 52

(a) *Ibid*, s 3

(b) *Ibid* The consent of the Attorney-General to institution of proceedings is necessary (*ibid*, s 7) As to place of trial, see p 278, *ante* Such offences are not triable at quarter sessions (Official Secrets Act, 1889 (52 & 53 Vict c. 52), s 6 (3))

(c) Co Litt 368 b, *Davey v Manningham* (1550), 1 Plowd 60, 68 As to extortion by threats to accuse of a crime, see p 666, *post*

(d) Bac Abr tit Extortion

(e) See *R v Loggen* (1718), 1 Stra 74, Quarter Sessions Act, 1812 (5 & 6 Vict c 38), s 1, Co Litt 368 b, 3 Co Inst. 149, 1 Hawk P. O., c 27, s 6

- Sec 3**  
**Offences**  
**by and in**  
**respect of**  
**Public**  
**Officers.**
- to which the offender knows he is not entitled A mere mistake in demanding or receiving a fee does not constitute extortion (*f*)
- An officer who takes a reward which is voluntarily given to him, and which it is customary to give for the more diligent or expeditious performance of his duty, is not guilty of extortion (*g*)
- The fact that the defendant has handed over the amount extorted to his superior officer is no defence (*h*)
- Sheriff etc**
- 956** Any sheriff or other officer of the King who takes any reward to do his office is to yield twice as much and to be punished at the King's pleasure (*i*)
- 957** Any sheriff, under-sheriff, bailiff or sheriff's officer, or any person employed in levying or collecting debts due to the Crown by process of any court, or any officer to whom the return or execution of writs belongs, is by statute (*k*) guilty of a misdemeanour, if he takes or demands any money or reward under any pretext whatever other than the fees allowed by law
- The punishment for this offence is a year's imprisonment and a fine (*l*).
- Coroner.**
- 958** A coroner is by statute (*m*) guilty of a misdemeanour if he acts extortionately or corruptly in his office, or if he wilfully neglects his duty or misbehaves in the discharge of his duty
- The punishment for this offence is imprisonment without hard labour and a fine (*n*) In addition to any other punishment such coroner may be adjudged by the court before which he is convicted to be removed from his office and to be disqualified from acting as coroner (*n*)
- Clerks of assize etc**
- 959** Clerks of assize, clerks of the peace, clerks of the court, or their deputies or officers are by statute (*o*) guilty of a
- (*f*) *Lee v Dugan, Grant & Co*, [1892] 2 Q B 337, C A, *Shoppie v Nathan & Co*, [1892] 1 Q B 243, 250, *Woolford's Estate (Trustee) v Lacy*, [1892] 1 Q B 772, C A.
- (*g*) *Bac Abi tit Extortion*, 3 Co Inst 149 But it will, it is submitted, be otherwise if he is forbidden by statute to accept any sum in addition to his legal fees
- (*h*) *R v Higgins* (1830), 4 C & P 247 But it may be an indication as to whether or not there was an intention to extort more than the defendant knew was due
- (*i*) Statute of Westminster the First (3 Edw 1), c 26 (1275)
- (*k*) Sheriffs Act, 1887 (50 & 51 Vict c 55), s 29 (2) (*h*)
- (*l*) *Ibid* He may also be punished as for contempt of court, and he is also liable to forfeit £200 to the person aggrieved and to pay all damages which he may have suffered (*ibid*) The offence is triable at quarter sessions
- In the case of a county court registrar, bailiff, or officer charged with extortion or misconduct the county court judge may inquire into the matter in a summary way and make an order for repayment of the money extorted and such damages as he thinks just and also fine the officer a sum not exceeding £10, and any such officer who wilfully and corruptly exacts or accepts any fee or reward other than the fees which are duly allowed may be declared for ever incapable of being employed under the County Courts Act, 1888 (51 & 52 Vict c 43), s 51 See title COUNTY COURTS, Vol VIII, p 424
- (*m*) Coroners Act, 1887 (50 & 51 Vict c 71), ss 8, 17 See title CORONERS Vol VIII, p 252 The offence is triable at quarter sessions
- (*n*) *Ibid*, s. 8
- (*o*) Gaol Fees Abolition Act, 1815 (55 Geo 3, c 50), ss 5, 9, Gaol Fees Abolition Act, 1845 (8 & 9 Vict c 114), s. 1.



misdeemeanour, if they exact fees from prisoners who are acquitted or discharged

The punishment for this offence is imprisonment without hard labour and fine (p)

**960** Gaolers who exact from a prisoner any fee or gratuity for entrance, commitment or discharge, or who detain him in custody for non-payment of any fee or gratuity, are punishable in the same way (q)

#### SUB SECT 3 — *Oppression*

**961** Any public officer is guilty of oppression if while exercising, or under colour of exercising, his office he inflicts upon any person from an improper motive any illegal bodily harm, imprisonment, or any injury other than extortion (r) Oppression is a misdemeanour at common law (s)

The punishment for this offence is imprisonment without hard labour and a fine (t)

A public officer is not guilty of oppression if he acted in good faith, in the belief that he had the legal right to do the act in question, and without any intention to act corruptly or oppressively (u)

(p) These offences are triable at quarter sessions

(q) Gaol Fees Abolition Act, 1815 (55 Geo 3, c 50), s 13 As to extortion by gaolers and others from prisoners arrested on civil process and the summary redress to be given by the civil courts, see Debtors Imprisonment Act, 1758 (32 Geo 2 c 28), ss 11, 12, and see *R v Colton* (1721) 8 Mod Rep 226 Prison officers are forbidden to receive any money or gratuity from a prisoner or any visitor (Prison Act, 1865 (28 & 29 Vict c 126), s 20, Sched J, r 66) Clerks and officers of the High Court are forbidden under heavy pecuniary penalties to demand or receive any gratuity or reward for doing or forbearing anything in relation to their office (Common Law Courts Act, 1852 (15 & 16 Vict c 75), s 26), relating to officers of the common law courts, and Court of Chancery Act, 1852 (15 & 16 Vict c 87), s 3, to officers of the Court of Chancery The penalty and mode of recovery differ in each case, and it is not clear how these statutes could be applied in the case of officers of the High Court Clerks to justices are liable to forfeit £20, if they demand or receive any greater fees than those to which they are entitled (Justices Clerks Fees Act, 1753 (26 Geo 2, c 14), s 2) There are similar penalties in the case of a clerk of the peace (Clerks of the Peace (Fees) Act, 1817 (57 Geo 3, c 91), s 2, Summary Jurisdiction Act, 1848 (11 & 12 Vict c 43), s 39) An officer or servant appointed or employed under the Public Health Act, 1875 (38 & 39 Vict c 55), who under colour of his office exacts or accepts any fee or reward other than his proper salary, wages, and allowances, is incapable of afterwards holding any office under that Act, and is liable to forfeit £50 to any person who may sue for it (*ibid*, s 193) The section does not apply to extra payment by a public authority to its officer for extra services (*Edwards v Salmons* (1889), 23 Q B D 531, C A) An action to recover the penalty cannot be commenced without the written consent of the Attorney General (Public Health (Officers) Act, 1894 (47 & 48 Vict c 74), s 2)

(r) Stephen, Digest of the Criminal Law, 88, Bar Abr tit OFFICER and Officers, N

(s) 4 Bl Com 140, *R v Olry* (1729), 8 Mod Rep 45, *R v Williams, R v Davis* (1762), 3 Burr 1317

(t) This offence is triable at quarter sessions (Dickinson's Quarter Sessions, 6th ed., 432)

(u) *R v Young* (1758), 1 Burr 557, *R v Baylis* (1762), 3 Burr 1318, *R v Jackson* (1787), 1 Term Rep 653, *R v Borron* (1820), 3 B & Ald 432, *R v Badger* (1843), 4 Q B 468, 474

SECT 3  
Offences  
by and in  
respect of  
Public  
Officers.  
Gaolers

Oppression.

## SECT 3

Offences  
by and in  
respect of  
Public  
Officers.

Bribery at  
elections

SUB SECT 4.—*Bribery of Public Officers.*

**962** Bribery at the election of members of Parliament is an indictable misdemeanour at common law punishable by fine and imprisonment (x), but this offence and those of personation, treating, undue influence, and similar corrupt and illegal practices at parliamentary elections are now usually punished under the provisions of various statutes which have been passed for that purpose (y)

Bribery at municipal elections is indictable at common law (z), and is also punishable by statute (a)

Bribery of  
judges etc

**963** A judge, magistrate, or other judicial officer who accepts any bribe or reward offered in order to influence him in anything done in the conduct of his office is guilty of a misdemeanour at common law

A person who offers or gives such a bribe or reward is guilty of a like misdemeanour

The punishment for the offence is fine and imprisonment without hard labour, and if the offender is a judicial officer, loss of office (b)

of Privy  
Councillors  
etc

**964** A person who attempts to procure an office by offering a bribe to a Privy Councillor or Minister of the Crown is guilty of a misdemeanour at common law (c)

of ministerial  
officers,

**965** Every person is guilty of a misdemeanour at common law who bribes a ministerial officer or, being a ministerial officer, accepts a bribe, where the object of the bribe is to induce such officer to do, or to omit to do, any act which to his knowledge is in violation of his official duty (d)

of members  
etc of public  
bodies.

**966** Any person is by statute (e) guilty of a misdemeanour who by himself or in conjunction with any other person (1) corruptly solicits or receives or agrees to receive for himself or any other person any gift, loan, fee, reward or advantage as an inducement to any member or servant of a public body (f) doing or forbearing to do

(x) *R v Pitt* (1762), 3 Burr 1335, 1338, 1339 Even an attempt to bribe was so indictable (*R v Vaughan* (1769), 4 Burr 2194, 2560), as to bribery of jurors see p 489, *post*

(y) See title ELECTIONS

(z) *R v Plympton* (1724), 2 Ld Raym 1377.

(a) See title ELECTIONS

(b) Bac Abr tit Offices and Officers, N, 3 Co Inst 145, 147, 1 Hawk P C, c 67 Bribery is not triable at quarter sessions except bribery under the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict c 69), see note (g) on p 485, *post*

(c) *R v Vaughan* (1769), 4 Burr 2194

(d) Stephen, Digest of the Criminal Law, 96, Fifth Report of Criminal Law Commissioners (1840), p 47, *R v Beale* (1798), cited 1 East, at p 183 As to bribery of members of corporations and others, see *R v Tuerton (Mayor)* (1723), 8 Mod. Rep 186, *R v Steuard* (1831), 2 B & Ad 12, *R v Lancaster* (1840), 16 Cox, C O 737, as to bribery of police constables, see Licensing Act, 1872 (35 & 36 Vict c 94), s. 16 (3), Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 14, County Police Act, 1839 (2 & 3 Vict c 93), s 12, *Chisholm v Holland* (1886), 50 J P. 197.

(e) Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict c 69), s 1

(f) The expression "public body" means a county or borough council, also any board, commissioners, vestry or other body having power to act under any Act relating to local government or the public health, or the poor law, or

**SECT. 2.**  
**Offences**  
**by and in**  
**respect of**  
**Public**  
**Officers.**

anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned, (2) corruptly gives, promises or offers to any person, whether for the benefit of that person or of another person, any gift etc as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter in which the public body is concerned

The punishment for this offence is imprisonment for not more than two years with or without hard labour, or a fine of £500, or both (g).

**SUB-SECT. 5—Breach of Trust etc by Public Officer.**

**967** Any public officer is guilty of a common law misdemeanour (h) who commits a breach of trust, fraud, or imposition in a matter affecting the public, even although the same conduct, if in a private transaction, would, as between individuals, have only given rise to an action

**Breach of**  
**trust by**  
**public officer**

The punishment for this offence is fine and imprisonment without hard labour (i)

**968** A duly qualified person who obstinately refuses to serve in a public office to which he has been appointed, if he has had due notice of the appointment, is guilty of a common law misdemeanour

**Refusing to**  
**serve in**  
**public office.**

The punishment for this offence is fine and imprisonment without hard labour (j)

If such a person is out of the country, provided he has not left the country to avoid his appointment or the service, he is not guilty. But he is guilty, even if he has paid an alternative fine, except when the fine is lawfully paid in lieu of service (k)

otherwise to administer money raised by rates under a public Act, but not any public body as so defined existing elsewhere than in the United Kingdom (*ibid*, s 7)

(g) Public Bodies Corrupt Practices Act, 1859 (52 & 53 Vict. c 69), s 2. This offence is triable at quarter sessions, see *ibid*, s 6. In addition the offender may be ordered to pay to the public body the amount or value of the gift or reward, and may be adjudged to be incapable of holding any public office for seven years and to forfeit any such office held by him at the time of his conviction. Upon a second conviction for a like offence he may, in addition to the foregoing penalties, be adjudged to be for ever incapable of holding any public office and to be incapable for seven years of being registered as an elector or voting at an election of a member to serve in parliament or of a member of any public body. If the person convicted is an officer or servant in the employ of any public body, the court before which he is convicted may order him to forfeit his claim to any compensation or pension to which he would otherwise have been entitled (*ibid*). In the Prevention of Corruption Act, 1906 (6 Edw 7, c 34), which is directed against corrupt transactions with "agents," the word "agent" includes a person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians.

(h) *R v Bembridge* (1783), 3 Doug (x b) 327, 332, and *R v. Leheup* (1755), *ibid*, p 332, n, *R v Jones* (1609), 31 State Tr 251, *R v Baxter* (1851), 5 Cox, C C 302, 312 (where a form of an indictment is given), *R v Martin* (1809), 2 Camp 268, *R v Dale* (1852), Dears. C C 37. As to larcenies etc by public officers, see pp 644, 654, *post*.

(i) This offence is triable at quarter sessions

(j) This offence is triable at quarter sessions

(k) 2 Chitty, Criminal Law, 266, *R. v. Dennison* (1758), 2 Keny 259, *R v.*

**SECT. 3.**  
**Offences**  
**by and in**  
**respect of**  
**Public**  
**Officers**

Neglect by  
 public officer  
 Sale of  
 public office

If a public officer neglects to perform a duty imposed on him either by common law or statute, he is guilty of a common law misdemeanour (*b*)

The punishment for the offence is fine and imprisonment and loss of office (*m*)

**SUB-SECT 6 —Sale of Offices**

**970** Every person is by statute (*n*) guilty of a misdemeanour who sells, purchases, or bargains for any office, commission, place or employment in the gift of the Crown or appointed by the Crown, or any participation in the profits thereof, or the resignation thereof, or who receives or pays, or contracts to receive or pay, any reward or profit for any interest, solicitation, or recommendation concerning the appointment to, or resignation of, any such office, place, or employment, or who keeps any office for negotiating any business relating to vacancies in offices in any public department (*o*)

The punishment for this and for the last-mentioned offence is fine and imprisonment without hard labour (*p*)

Sale of  
 commission  
 in the army  
 etc.

**971** Every person is by statute (*q*) guilty of a misdemeanour who negotiates or otherwise aids or connives at (1) the sale or purchase of any commission in the King's regular forces, or (2) the giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces or any employment therein, or (3) any exchange made in manner not authorised under the Regimental Exchanges Act, 1875 (*r*), and in respect of which any consideration is given

The punishment for such offence on conviction on indictment or

*Woodrow* (1798) 2 Term Rep 731 *R v Bunder* (1792) 4 Term Rep 778, *R v Bouer* (1823), 1 B & C 585 As to persons entitled to immunity from service in a parochial office, see Archbold's Criminal Pleading, 23rd ed., 1251

(*f*) Stephen, Digest of the Criminal Law 90, *J v Wyatt* (1705), 1 Salk 380 The law requires that, whether a man seeks a public office or is compelled to accept it he should do his best in that office and that he must act in it with ordinary firmness, judgment, and discretion A public officer who does not so act is guilty of a common law misdemeanour, however honest and honourable his intentions may have been (*R v Pinney* (1832), 3 State Tr (N S) 11, 510, *R v Lyle* (1865), (Finlison's Report 1868), 55, 55)

(*m*) 1 Hawk P C, c 27, s 1, 4 Bl Com 140 The offence is triable at quarter sessions

(*n*) Sale of Offices Act, 1809 (49 Geo 3 c 126) s 3 Various offices are specified in this Act and in the Sale of Offices Act, 1551 (5 & 6 Edw 6, c 16), to the offices mentioned in which the Sale of Offices Act, 1809 (49 Geo 3, c 126), extends As to the construction of these statutes, see *Hopkins v Prescott* (1847), 4 C B 378, *Graeme v Wroughton* (1850), 11 Exch 146, *Sterry v Clifton* (1850), 9 C B 110, *Samor v R* (1847), 2 Cox, C C 178 It is unlawful for anyone to "buy, sell, let or take to farm" the office of under-sheriff, bailiff, or any other office appertaining to the office of sheriff (see *Sheriffs Act, 1887* (50 & 51 Vict c 57), s 27)

(*o*) Sale of Offices Act, 1809 (49 Geo 3 c 126) ss 4, 5 This is also a misdemeanour at common law (see *R v Vaughan* (1769), 4 Burr 2494, 2501, *R v Pollman* (1809) 2 Camp 229)

(*p*) These offences are triable at quarter sessions

(*q*) Army Act, 1881 (44 & 45 Vict c 58), s 155 The Act excepts the Army Purchase Commissioners (appointed under the Regulation of the Forces Act, 1871 (34 & 35 Vict c 86) s 10) and persons acting under their authority

(*r*) 38 & 39 Vict c 16

information is a fine of £100, or imprisonment without hard labour for six months (s)

SECT 8  
Offences  
by and in  
respect of  
Public  
Officers.

SUB-SECT 7—*Offences by Particular Officers*

**972** A person who has been appointed to the office of parish constable is bound to serve, if he is resident within the parish, if he merely carries on business within the parish, but he has no dwelling or sleeping-place there, he is not bound to serve (t)

**973** It is the duty of a sheriff to cause a prisoner sentenced to death to be executed, and if a sheriff in whose custody the convict is neglects that duty, he is guilty of a misdemeanour at common law (u) Sheriff.

Any sheriff or his under-sheriff or officer is by statute (a) guilty of a misdemeanour who conceals or refuses to arrest any felon or releases a prisoner who is not bailable, or is guilty of any offence against, or breach of the provisions of, the Sheriffs Act, 1887 (b) The punishment for this offence is imprisonment without hard labour for a year and a fine, or, if the offender is unable to pay the fine, imprisonment without hard labour for not more than three years (c)

**974** An overseer of the poor who does not provide for a pauper whom he is bound to relieve is guilty of a common law misdemeanour (d), a relieving officer who does not supply medical assistance to a pauper who needs it and applies for it is also guilty of a similar misdemeanour (e), so is a gaoler who ill treats a prisoner or allows a prisoner to escape (f) Overseer etc

(s) Army Act, 1881 (44 & 45 Vict c 58), s 155 If the offender is an officer, he may also be dismissed by court martial from the service (*ibid*) The offence is triable at quarter sessions

(t) *R v Aldard* (1820) 4 B & C 772 It is submitted that the same rule applies in the case of every office the duties of which require to be performed in person (see *Donne v Martyr* (1828), 8 B & C 62) As to the method of appointment of a parish constable in cases where they may all be appointed and as to his obligation to serve unless he can find a substitute see the Parish Constables Act, 1872 (35 & 36 Vict c 92), ss 2, 3 Special constables who refuse to serve when duly appointed by two or more justices are liable on summary conviction to a fine of £5 (Special Constables Act, 1831 (1 & 2 Will 4, c 41), s 8) As to special constables in boroughs, see Municipal Corporations Act, 1862 (45 & 46 Vict c 50), ss 194 196

(u) *R v Antrobus* (1835), 2 Ad & El 788, 798 The offence is triable at quarter sessions

(a) Sheriffs Act, 1887 (50 & 51 Vict c 55), s 29, and see title SHERIFFS AND BAILIFFS

(b) *Ibid*

(c) Sheriffs Act, 1887 (50 & 51 Vict c 55), s 29, he may also be punished summarily by the High Court and certain other courts (see sub-s 3) Proceedings by indictment or to recover penalties must be commenced within two years (sub-s 7), and a summary proceeding before the end of the next sitting of the court These offences are triable at quarter sessions

(d) *R v Meredith* (1803), Buss. & Ry 46 see also *R v Davis* (1754), 1 Sir 163 Pecuniary penalties are provided for the refusal or neglect by an overseer of the poor to make out and deliver proper lists of parliamentary voters, and he cannot be indicted for such refusal or neglect (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict c 18), s 51, *R v Hall*, [1891] 1 Q B 747) See title ELECTIONS

(e) *R v Curtis* (1885), 15 Cox, C C 746

(f) 1 Hawk P C, c 27, s 2 These offences may be tried at quarter sessions As to neglect of duty by a coroner, see p 482, *ante*, and title CORONERS, Vol VIII, p 201

## SECT. 3

Offences  
by and in  
respect of  
Public  
Officers.Offences by  
officers in  
the army.

**975** A soldier is amenable to the criminal law to the same extent as any other subject, and is punishable by the ordinary courts having a criminal jurisdiction (*g*)

Any officer is by statute (*h*) guilty of a misdemeanour who (1) neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is accused or convicted of any offence, or (2) wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier

A soldier in a subordinate position is not, it would seem, criminally responsible for the consequences of obeying the orders of his superior officer whose orders he is bound to obey, provided those orders are not having regard to the occasion upon which they are given and executed, manifestly illegal (*i*)

Any officer is by statute (*k*) guilty of a misdemeanour who quarters or causes to be billeted any soldier or horse otherwise than as the Army Act, 1881, allows (*l*)

The punishment for this and for the last-mentioned offence is fine and imprisonment without hard labour (*m*)

Offences by  
Post Office  
servants etc

**976.** Any person employed under the Post Office is by statute (*n*) guilty of a misdemeanour who contrary to his duty opens, or procures or suffers to be opened, or who wilfully detains or delays or procures or suffers to be detained or delayed, any postal packet in course of transmission by post, or who discloses or intercepts the contents of a telegram

The punishment for such offence is imprisonment with or without hard labour or a fine, or both imprisonment and fine (*o*)

Any person who has official duties connected with the Post Office, or who is acting on behalf of the Postmaster-General, is by statute (*p*) guilty of a misdemeanour, if contrary to his duty he discloses or in any way makes known or intercepts the contents or any part of the

(*g*) Army Act 1881 (44 & 45 Vict c 58) s 41 (b), 141 (1), (2) As to courts martial, see title COURTS, p 102, *ante*, and as to "martial law," see p 104, *ante*, and *Tilanko v A-G of Natal*, [1907] A C 93, P C

(*h*) *Ibid*, s 162 (3)

(*i*) 1 Stephen, *History of the Criminal Law* 204, *R v Trainer* (1864), 4 F & F 100, 111, *R v Hutchinson* (1864), 9 Cox C C 555, *Keighly v Bell* (1866), 1 F & F 763

(*k*) Army Act, 1881 (44 & 45 Vict c 58) s 111 Several minor offences connected with billeting are made punishable by the Act by fine upon summary conviction (see *ibid*, ss 109 and 110)

(*l*) 44 & 45 Vict c 58

(*m*) These offences are triable at quarter sessions

(*n*) Post Office Act, 1908 (8 Edw 7, c 48), s 56 This does not extend to opening or delaying a postal packet returned for want of a true direction or because the addressee is dead or cannot be found or refuses to receive it, or to the opening or detaining of a postal packet under the authority of the Act or in obedience to an express warrant of a Secretary of State (*ibid*) The expression "postal packet" includes every packet or article transmissible by post, and also a telegram (*ibid*, s 89) This offence is triable at quarter sessions As to the punishment on summary conviction of Post Office officials for negligence drunkenness or other misconduct, see s 57

(*o*) *Ibid*. As to stealing or embezzling by Post Office servants see pp 644, 654, *post*.

(*p*) Telegraph Act 1868 (31 & 32 Vict c 110), s 20

contents of a telegraphic message intrusted to the Postmaster-General for the purpose of transmission

The punishment for this offence is imprisonment without hard labour for not more than twelve calendar months (*q*)

**977** Any commissioner or collector or officer or person employed in relation to the Inland Revenue is by statute (*s*) guilty of a misdemeanour who asks for or receives any sum of money or recompense or any promise thereof, or enters into any collusive agreement to do, abstain from, conceal, or connive at any act whereby the King may be defrauded

The punishment for this offence is a fine of £500, and on conviction the offender becomes incapable of ever holding any office under the Crown (*s*)

**978** Any collector of Inland Revenue is by statute guilty of a misdemeanour (*t*) who neglects to keep and render the prescribed accounts of sums received by him

Any collector or any person appointed to be an officer and employed in relation to duties of excise is by statute (*a*) guilty of a misdemeanour, if he trades in any goods subject to any such duty or is concerned in any business subject to any law of excise

#### Sect. 4—Offences relating to the Administration of Justice (*b*).

##### SUB-SECT. 1.—*Embracery*

**979** Anyone is at common law guilty of the misdemeanour of embracery who attempts to corrupt, influence, or instruct a jury or to incline them to favour one side more than the other, whether by money, promises, letters, threats, or persuasion, or by any other means than by evidence and arguments in open court at the trial

To give jurors money after their verdict is an act of embracery, though there was no previous promise to pay it

The offence may be committed as well by one of the jury as by a party to the cause or any person acting on his behalf (*c*)

Every person is at common law guilty of a misdemeanour who by improper means procures himself or others to be sworn upon a jury for the purpose of giving a verdict favourable to one of the parties (*d*) or induces a juror not to appear (*e*)

(*g*) Telegraph Act, 1866 (31 & 32 Vict c 110), s 20 This offence is triable at quarter sessions

Inland Revenue Regulation Act, 1890 (53 & 54 Vict c 21), s 10

*Ibid*

(*h*) *Ibid*, s 14 (2) On conviction the offender becomes disqualified from holding any office under the Crown He would also, it seems, be liable to fine and imprisonment

(*a*) *Ibid*, s 7 The punishment, it seems, is imprisonment, and the offender forfeits his office and becomes incapable of ever holding any office relating to the excise (*ibid*) *Quære*, whether this and the two last mentioned offences are triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(*b*) As to corruption of judges, see p 484, *ante*

(*c*) 1 Hawk P C, c 27, ss 1—4 See stat (1540) 32 Hen 8, c 7, s 3, and the Jurors Act, 1825 (6 Geo 4, c 50), s 61

(*d*) 1 Hawk P C, c 27, s 4, *R v Opie* (1670), 1 Saund 301, *Hussey v Cook* (1620), Hob 294

(*e*) 1 Hawk P C, c. 27, s 6, *Hussey v Cook*, *supra*

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Offences  
by and in  
respect of  
Public  
Officers.

Offences by  
revenue  
officers etc.

bracery.

**SECT 4**  
**Offences**  
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**tion of**  
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**Perjury.**

The punishment for this and for the last mentioned offence is fine and imprisonment without hard labour (*f*)

**SUB-SECT 2 — Perjury**

**980** A person is guilty of the common law misdemeanour of perjury (*g*) who in the course of a judicial proceeding before an authority of competent jurisdiction makes upon oath or affirmation a statement which is material to the matter in question in such proceeding and is false to the knowledge of the person making it or is not known or believed by him to be true (*h*)

The punishment by statute for wilful and corrupt perjury is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*i*)

Children of tender years are under certain circumstances allowed to give evidence without being sworn, but in such a case they are liable to be punished for perjury on summary conviction, if they give false evidence (*k*)

**Judicial**  
**proceedings**

**981** The oath must have been taken in a judicial proceeding or inquiry, but not necessarily in a then pending litigation, if it is taken in the usual course with a view to and for the purposes of litigation (*a*)

**Jurisdiction**

**982** The making of a false statement on oath etc does not amount to perjury unless the oath etc is taken before an authority having competent jurisdiction, *i.e.*, before a person having legal authority to administer it, and in a court having jurisdiction over the matter which is in question in the proceedings in which the oath or affirmation is taken (*b*)

(*f*) These offences are, it seems, triable at quarter sessions

(*g*) As to other false oaths and declarations, see p 497, *post*

(*h*) 1 Hawk P C c 27 s 1, Stephen, Digest of the Criminal Law, 106 *R v Lybett* (1782), 1 Term Rep 63 69 As to oaths and affirmations, see title EVIDENCE

(*i*) Perjury Act, 1729 (2 Geo 2 c 20), s 2, Penal Servitude Act, 1857 (20 & 21 Vict c 3), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 See *R v Castro* (1880), 5 Q B D 190, (*Castro v R* (1881), 6 App Cas 229 Perjury is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1, *R v Haynes* (1825), 1 Ky & M 298) The common law punishment was fine and imprisonment (3 Co Inst 164)

(*k*) See Prevention of Cruelty to Children Act, 1901 (4 Edw 7, c 15), s 15, Children Act, 1908 (8 Edw 7, c 67), s 30 and p 408, *ante*

(*a*) *King v R* (1849), 14 Q B 31, Ex Ch, see also *R v White* (1829), 1 Mood & M 271 *R v Mudie* (1831) 1 Mood & R 128 *Clendinning v O'Malley* (1842), 1 Con & Law 363, Ir, *R v Tomlinson* (1866) 1 L R 1 C C R 49 *R v Proud* (1867) 1 L R 1 C C R 71 Proceedings in an arbitration before a county court judge under the Workmen's Compensation Act, 1906 (6 Edw 7, c 58), are judicial proceedings, and a witness may be indicted for perjury in respect of false evidence given therein (*R v Crossley*, [1909] 1 K B 411, C C A)

(*b*) 3 Co Inst 166, 1 Hawk P C, c 69, ss 3, 4 In the following instances it has been held that a false oath amounted to perjury — *R v Hughes* (1844), 1 Car & Kir 519 (evidence before a grand jury), *R v Heane* (1864), 4 B & S 947 (evidence before a naval court-martial, as to which see now Naval Discipline Act (29 & 30 Vict c 109), s 67, and as to army courts martial, Army Act, 1881 (44 & 45 Vict c 58) s 126 (2)), *R v Millard* (1853), Dears C C 166 (evidence on hearing of summons for malicious trespass, the information not having been given on oath), *R v Fletcher* (1871) 1 L R 1 C C R 320, *R v Chugy* (1870), 11 Cox, C C 558, *R v Berry* (1869) Bell, C C 46, *R v*



Commissioners for oaths may administer oaths or take affidavits for the purposes of any court or matter in England, including matters relating to the registration of any instrument, whether under Act of Parliament or otherwise (c), and false oaths taken before them are punishable as perjury (d).

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If a false affidavit is sworn abroad before a person authorised by English law to administer an oath (e), and is used in England, the deponent is guilty of perjury (f). If a false affidavit is sworn abroad before a person not so authorised (g), the deponent is not guilty of perjury, but is guilty of a misdemeanour, if he uses such a false document in order to pervert the course of justice (h).

False  
affidavits.

A person who makes a false promissory oath is not guilty of perjury (i), nor is a juror punishable who gives a verdict contrary to his oath and the manifest evidence (k).

Promissory  
oath.

**983** To support a charge of perjury it is necessary that the evidence alleged to be false should have been material to the issue or matter then under the consideration of the court (l). Evidence

False state-  
ment must  
be material.

*Simmons* (1809), Bell, C C 168 (evidence of defendant on irregular or defective bastardy proceedings in which he had appeared without objecting to irregularity). In the following cases it was held that a false oath did not amount to perjury, not having been taken before an authority with competent jurisdiction—*R v Ewington* (1841), 2 Mood C C 223 (evidence given in bankruptcy proceedings, there having been no good petitioning creditor's debt to support the fiat), *R v Scotton* (1844), 5 Q B 493 (evidence given on the hearing of a summons under the Game Act, 1831 (1 & 2 Will 4, c 32), there having been no information on oath which was then a condition precedent to the issuing of a summons, the authority of *R v Scotton* was, however, doubted in *R v Hughes* (1879), 4 Q B D 614, 628 630, C C R, in which it was held that if a person is rightly or wrongly brought in person before justices and a charge of an offence committed within their jurisdiction is then made against him, they are acting within their jurisdiction, and perjury may be assigned upon false evidence given in the course of such proceedings), *R v Bacon* (1870), 11 Cox, C C 540 (evidence given on a charge under s 78 of the Highway Act, 1835 (5 & 6 Will 4, c 50), of furious riding the justices having under that Act only power to fine for furious driving, see *W. v. Williams v. Evans* (1876), 1 Ex D 277). *R v Clegg* (1864), 19 L J 47 (evidence given by the defendant on the hearing of a summons against himself for permitting gambling, the defendant not being then a competent witness on his own behalf and falsely pretending that he was his own son, see now Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 1), *R v Lloyd* (1857), 19 Q B D 213, C C R (where the defendant had been sworn before the registrar as a witness in an examination in bankruptcy, but the registrar was not present in the room at the time when the alleged false evidence was given), *R v Cohen* (1816), 1 Stark 511 (evidence given at the trial of an action brought by two plaintiffs one of whom died before the trial, whereby the action had abated, the proper suggestion not having been made on the record). And see title OATHS AND AFFIRMATIONS.

(c) Commissioners for Oaths Act, 1889 (52 Vict c 10), s 1.

(d) *Ibid.*, s 7.

(e) As to who are such persons, see Commissioners for Oaths Act, 1889 (52 Vict c 10), s 6, and R S C, Ord. 38, r 6.

(f) Commissioners for Oaths Act, 1889 (52 Vict c 10), s 7, and see p 494, *post*.

(g) *Musgrave v Medex* (1816), 19 Ves 652.

(h) *Omealy v Newell* (1807), 8 East, 364, 372.

(i) 1 Hawk P C, c 27, s 3, *et seq.*, oaths required by law upon taking certain offices that the deponent will faithfully perform the duties of the office.

(k) *Bushell's Case* (1670), 6 State Tr 999.

(l) 3 Co Inst 167, 1 Hawk P C, c 27, s 8. Whether or not the evidence alleged to be untrue was material is probably a question for the judge, and not for the jury (*R v Courtney* (1856), 7 Cox, C C 111, C C R (Ir.), *R v. Gibbon*

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is material if it is of such a nature as in any way to affect directly or indirectly the probability of anything to be determined by the proceeding (*m*) Evidence in any way affecting the credit or credibility of the deponent or of any other witness is material (*n*) Evidence may be material, although it was legally inadmissible and wrongly admitted (*o*)

If the false evidence was as to a matter which was only collateral to the issue, and which did not affect the credit of the deponent or another witness, it is not material, and will not support an indictment for perjury (*p*).

**Must be**  
**statement of**  
**fact**

**984.** The statement on oath must have been a statement of a fact and not a mere opinion (*q*) But whether or not the defendant held the opinion which he swore he did hold, is a question of fact upon which an indictment may be founded (*r*)

If a man wilfully and corruptly swears to a particular fact without knowing at the time whether this fact is true or false, he is guilty of perjury (*s*)

A false statement does not amount to perjury, unless it was made intentionally with some degree of deliberation, and without inadvertence (*t*)

(1861), *L. & C.* 109, 114, *R. v. Worley* (1849), 3 Cox, C C 535, *R. v. Southwood* (1858), 1 F & F 356, *R. v. Dunston* (1824), Ry & M 109, but there is some authority to the contrary (see *R. v. Goddard* (1861), 2 F & F 361, *R. v. Lacey* (1850), 3 Car & Kir 26)

(*m*) 1 Hawk P C, c 69, s 8, Stephen, Digest of the Criminal Law, 107, *R. v. Tyson* (1867), 1 R 1 C O R 107

(*n*) *R. v. Gibbon* (1862), *L. & C.* 109, *R. v. Baker*, [1895] 1 Q B 797, C O R (all the earlier authorities were referred to in these cases)

(*o*) *R. v. Phillpotts* (1851), 2 Den 302, *R. v. Gibbon*, *supra*

(*p*) 3 Co Inst 167, 1 Hawk P C, c 27, s 8, *R. v. Gripe* (1697), 12 Mod. Rep 139, 142, *R. v. Murray* (1858), 1 F & F 60, *R. v. Holden* (1872), 12 Cox, C C 166 In the last-mentioned case the defendant was indicted for perjury committed before justices upon a charge by him against the prosecutor of using language calculated to incite to the commission of a breach of the peace This language was alleged to have been used in consequence of the cruelty of the defendant to a horse, and the assignment of perjury was upon the defendant's oath that he had committed no act of cruelty to the horse, *MELLOR, J.*, after consultation with *LUSH, J.*, held that the defendant's words were merely collateral to the issue before the justices, and he directed an acquittal. In *R. v. Dunston* (1824), Ry & M 109, it was held by *ABBOTT, C J.*, that the defendant could not be indicted for perjury in his sworn answer in a Chancery suit for specific performance in which he set up the Statute of Frauds as a defence, and also denied the existence of any verbal agreement to the effect alleged in the bill, this allegation being immaterial and irrelevant see also *R. v. Beneszech* (1796), Peake, Add Cas 93, and compare *R. v. Yates* (1841), Car & M. 132

(*q*) *R. v. Crispigny* (1795) 1 Esp 250

(*r*) *Meller's Case* (1773), 2 W Bl 481, 886, *R. v. Podley* (1784), 1 Leach, 325, 1 Hawk P O, c 27, s 7, n, *R. v. Schlasinger* (1847), 10 Q. B. 670

(*s*) *R. v. Maubrey (Bart)* (1796), 6 Term Rep 619, 637, and this appears to be the case even though the fact alleged be true, if the defendant did not know or believe it to be true (3 Co Inst. 166, 1 Hawk P O, c 27, s. 6, *Allen v. Westley* (1828), Het. 97 See *R. v. Petrus* (1903), 67 J. P 378)

(*t*) 1 Hawk P C, c. 27, s 2; see *R. v. London* (1871), 12 Cox, C C 50, C C B If the indictment is for perjury in an affidavit which the defendant signed as a makaman, it must be proved that it was read over to him before he swore it, unless the jurat states that it was so read over, in which case credit is, in the absence of evidence to the contrary, given to the statement in the jurat (*R. v.*

**985.** Two or more persons cannot be joined in one indictment for perjury, the offence being in its nature several (u)

An indictment may contain several assignments (s) alleging different acts of perjury, and a conviction upon any one assignment will be good (b).

In an indictment for perjury or for taking a false oath or declaration it is sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath or declaration etc. was taken, without setting forth the pleading, indictment, or any part of any proceeding, or the commission or authority of the court or person before whom such offence was committed (c).

An indictment for perjury must, however, show that the false oath was taken in a judicial proceeding and before a court of competent jurisdiction (d), but it need not allege in detail facts showing that the court had jurisdiction over the matter in question.

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**—**  
**Indictment.**

*Hayley* (1824), 1 O & P 258, and see *R v Petricus, supra*) If the alleged false statement was in a foreign language, it is sufficient to set forth an English translation in the indictment, alleging that the defendant swore "in substance and to the effect following, that is to say" (*R v Thomas* (1818), 2 Car & Kir 806). The fact that owing to an informality in the jurat or other technicality the affidavit could not have been used will not prevent an indictment being founded upon it (*R v Hayley, supra*, *Hill v Hamont* (1841), 8 M & W 317, per ALDERSON, B, *R v Christian* (1842), Car & M 388, 393). The offence is complete upon the false oath being taken, and the fact that no use was made of the affidavit and no proceeding founded upon it is immaterial (*R v Crossley* (1797), 7 Term Rep 315), so also is the fact that the false evidence was rejected as inadmissible or withdrawn (*R v Philipotts* (1851), 2 Den 302). In *R v Carr* (1669), 1 Sid 418, it was held by the court upon a trial at bar that upon an indictment for perjury in an answer in Chancery to which exceptions were taken, whereupon a second answer was put in giving explanations, nothing could be assigned as perjury which was explained in the second answer, because the second answer made that which was at first a perjury no perjury. See the observations of Lord ELDON, L C, on this case in *Edwards v M'Leay* (1813), 2 Ves & B at p 258. In *R v Jones* (1791), Peake, 17, Lord KENYON, O J., held that in the case of an assignment of perjury upon oral evidence the whole of the defendant's evidence should be proved, for if in one part of his evidence he corrected any mistake he had made in another part of it, it would not be perjury, but in *R v Dowlson* (1793), Peake, 170, the same judge held that if the alleged false statement was an isolated answer, given in cross examination, and entirely unconnected with the original examination, the latter need not be proved. See also *R v Rowley* (1825), Ry & M 289, *R v Munton* (1829), 3 O & P 498.

(u) *R v Philips* (1731), 2 Stra 921, but it is otherwise in indictments for subornation of perjury (*R v Rhodes* (1703), 2 Id Raym 886), and probably an indictment one count of which charges one defendant with perjury and another charges another defendant with subornation is good (1 Russell on Crimes, 342, n). See for such an indictment *R v Goodfellow* (1842), Car & M 669. The indictment may charge different acts of perjury in separate counts (*Cutro v R* (1881), 6 App Cas 229).

(s) The assignment of perjury in an indictment is the formal statement of the alleged false evidence.

(b) *R v Rhodes, supra*

(c) Criminal Procedure Act, 1851 (14 & 15 Vict. c 100) s. 20.

(d) *R v Pearson* (1837), 8 O & P 119, *R v Overton* (1843), 4 Q B 81, *R v Bishop* (1842), Car & M 302. Where an indictment for perjury stated that the false oath had been taken at quarter sessions upon the trial of "a certain indictment for misdemeanour" against two persons, it was held that the indictment for perjury was good, although it did not state what the misdemeanour

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If the alleged perjury is in an affidavit or statutory declaration made before a commissioner to administer oaths, it is not sufficient to allege generally his authority to take an oath, the circumstances under which the oath was taken should be set out in the indictment in order that the court may judge of the authority (e)

The indictment must show, either by an express averment or by a statement of the proceedings or facts of the case, that the question to which the false statement related was material (f).

The indictment must show either explicitly or otherwise what the material question was to which the alleged false statement related (g)

The indictment will be bad, unless it alleges that the defendant swore "falsely" The words "corruptly," "knowingly," or "maliciously" are insufficient to supply the defect (h)

Although in an indictment for the common law offence it is not necessary to allege that the defendant swore "wilfully" (i), an indictment for perjury, in order to satisfy the Perjury Act, 1728 (h), must state that the defendant swore "wilfully and corruptly" (l)

**Evidence.**

**986.** To prove each assignment of perjury there must either be (1) the evidence of two witnesses confirming each other in substantial matters, and disproving the defendant's statement alleged to be false (m), or (2) the evidence of one witness confirmed by other independent and corroborative circumstances (n), or (3) evidence that the defendant has himself made a contradictory statement on oath or in writing, and also that such contradictory statement was true and that the statement alleged in the assignment was false (o)

was or that the court of quarter sessions had jurisdiction to try it (*R v Dunning* (1871), 1 R 1 O C R 290, see also *R v Doulton* (1793), 5 Term Rep 311, 320, *R v Callanan* (1826), 6 B & O 102, *Lavey v R* (1851), 17 Q B 496, Ex Ch)

(e) *R v McDonald* (1905), 21 Cox, C C 70, per DARLING, J, and see *R v Nott* (1943), 4 Q B 768

(f) *R v Doulton* (1793), 5 Term Rep 311 318 *R v Nicholl* (1830), 1 B & Ad 21 24, *R v Cuts* (1850), 4 Cox, O C 430, if it does not do so, the defect cannot be cured by amendment (*R v Harvey* (1858), 8 Cox, C O 99)

(g) An averment "that it became and was material to ascertain the truth of the matter hereinafter alleged to have been sworn to and stated by the said J G upon his oath" is not a good averment of materiality (*R v Goodfellow* (1842), Car & M 569)

(h) *R v Oxley* (1852), 3 Car & Kir 317, *R v Harris* (1822), 5 B & Ald. 926

(i) *R v Cox* (1770), 1 Leach, 71

(k) 2 Geo 2, c 25, s 2

(l) *R v Stevens* (1826), 5 B & C 246 With regard to the form of oath it is sufficient to allege that the defendant was in due manner sworn without stating the form of oath (*R v McCarther* (1792), Peake, 155, per Lord KENYON, C J) The various assignments of perjury must be negatived by averments as in an indictment for obtaining property by false pretences (*R v Perrott* (1814), 2 M & S 379, 385) As to venue, see pp 280, n, 284, n, ante

(m) *R v Yates* (1841), Car & M 132, *R v Parker* (1842), Car & M 639

(n) *R v Boulter* (1841), 3 Car & Kir 236, *R v Braithwaite* (1859), 8 Cox, O O 254; *R v Webster* (1859), 1 F & F 515, where even a memorandum made by the witness at the time was held by COCKBURN, C J, to be sufficient corroboration, *sed quare*, see 1 Russell on Crimes, 371, n

(o) In *R v Knill* (1822), 5 B & Ald. 929, n (see also 939, n), it was held that evidence that the defendant had upon another occasion made a contradictory

The averment in the indictment of the words alleged to have been spoken must be strictly proved (p).

Evidence must also be given that the oath was taken in a judicial proceeding and before a court or person of competent jurisdiction, and for this purpose the record of the proceedings must be proved (q).

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statement on oath was sufficient without further evidence showing which of his two statements was false, but it is submitted that this is not law (see *R v Hook* (1858), Dears & B 606, where it was said by POLLOCK, C.B., at p. 614, that probably no judge would now direct a conviction upon such evidence as was deemed sufficient in *R v Knell* without confirmatory circumstances, *R v Wheatland* (1838), 8 C & P 238, *R v Jackson* (1823), 1 Lew C C 270, *R v Hughes* (1844), 1 Car & Kir 519). Where one witness proves the falsity of the defendant's statement which is the subject of the indictment, contradictory written statements by the defendant, though not made upon oath, have been held to be a sufficient corroboration (*R v Mayhew* (1834), 6 O & P 315). It is not necessary to prove by two witnesses every fact which goes to make out an assignment of perjury (*R v Roberts* (1818), 2 Car & Kir 607, *R v Hare* (1876), 13 Cox, C C 174).

(p) *R v Bird* (1891), 17 Cox, C C 387, where the averment was that the defendant had sworn he had seen a certain person at 11 15 a.m., but the evidence showed that the defendant had sworn he had seen him at 11 15, but without stating whether it was a.m. or p.m., and DAY J., directed an acquittal. To prove what the defendant swore a witness must be called who heard his evidence given, a magistrate's clerk's notes or those of a shorthand writer may be used by the person who wrote them to refresh his memory in giving evidence, but they are not themselves evidence (*R v Newall* (1852) 6 Cox, C C 21), nor are the judge's notes (*R v Child* (1861), 5 Cox, C C 197, 203), what was said by the judge in delivering judgment in the court in which the oath was taken is not evidence (*R v Britton* (1893) 17 Cox, C C 627), nor is the result of the proceedings in that court (*R v Goodfellow* (1842), Car & M 569, 574, *R v Fonten Moreau* (1848) 11 Q B 1028). The judge may apparently be subpoenaed to prove what evidence was given before him (*R v Morgan* (1852), 6 Cox, C C 107, 108 MARRIN, B.), but that course ought not to be taken (*R v Hazard* (1834), 8 C & P 595, PATTERSON, J.), and it appears that persons occupying a judicial position, though they are competent witnesses, cannot be compelled to give evidence as to what has taken place before them when acting in that capacity (*Ellis v Saltau* (1808), 4 C & P 327, n, *Ponsford v Swayne* (1861), 4 L. T. (N.S.) 15) and PORLOCK, B., is stated to have refused to give such evidence (2 Taylor, Evidence, 987, n).

(q) As to proceedings in the High Court, see *R v Scott* (1877), 2 Q B D 415, C C R., where it was held sufficient to produce the filed copies of the writ and pleadings. A sealed copy of the minutes of proceedings in a county court, certified by the registrar, are sufficient proof of such proceedings and of the regularity thereof, and of the due appointment of the judge or deputy judge (County Courts Act, 1858 (51 & 52 Vict c 43), s 28, *R v Roberts* (1878), 14 Cox, C C 101 C C R.). If the perjury is alleged to have taken place at a criminal trial, the proceedings may be proved by the production of the record by the officer of the court. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanour purporting to be signed by the clerk of the court or other officer of the court having custody of the records of the court where the indictment was tried, or his deputy, is upon the trial of any indictment for perjury or subornation of perjury sufficient evidence of the trial of such indictment without proof of the signature or official character of the person appearing to have signed the certificate (Criminal Procedure Act, 1851 (14 & 15 Vict c 100) s 22). The indictment alone is not sufficient evidence of the proceedings (*R v Colles* (1887), 16 Cox, C C 165), but production by the officer of the court of the caption, indictment, and minutes from which the record would be drawn up is sufficient (*R v Newman* (1852), 2 Den 390). If the alleged perjury was committed before justices the information must be proved and also the summons, and notice should be given to the defendant to produce the original

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Judge  
directing  
prosecution  
for perjury

Evidence must be given to prove that the alleged false statement was false to the defendant's knowledge. Further evidence may be given to show that the perjury was wilful and corrupt, *e.g.*, by proof of expressions of malice used by the defendant towards the person against whom he gave the false evidence (*r*).

987. A judge of a superior court, justice or commissioner of assize, *magistrus*, or gaol delivery, recorder, deputy recorder, chairman, or other judge of quarter sessions, judge or deputy judge of a county court or any court of record, justices of the peace in special or petty sessions, and a sheriff or deputy sheriff before whom any writ of inquiry or similar writ from any of the superior courts is executed, may, in case it shall appear that any person has been guilty of perjury in any evidence given or any affidavit etc or other proceeding before him, direct such person to be prosecuted for such perjury and may commit him for trial (*s*)

Statutory  
declarations.

988. Declarations have been substituted by various statutes (*a*) for oaths and affidavits in many cases. In any case where a declaration is so substituted by statute for an oath, or is authorised by statute to be made, any person who wilfully and corruptly makes such a declaration knowing it to be untrue in any material particular is guilty of a misdemeanour (*b*)

summons, if it was served upon him (*R v Newall* (1852), 6 Cox, C C 21, *R v Hurrell* (1862), 3 F & F 271, *R v Whybrow* (1861), 8 Cox, C C 438, *R v Dillon* (1877), 14 Cox, C C 4), but if the defendant appeared before the justices, proof of the summons is not necessary (*R v Shaw* (1860), L & Ca 579, 586, 592, *R v Smith* (1867), L R 10 C R 110). To prove the jurisdiction of the justices upon a charge under the Licensing Act with reference to licensed premises the licence must be put in evidence (*R v Lewis* (1872), 12 Cox, C C 163, *R v Evans* (1890), 17 Cox, C C 37). That a commissioner to administer oaths has acted as such is *prima facie* evidence of his authority to take the oath without proof of his commission (*R v Howard* (1832), 1 Mood & R 187, *R v Acuton* (1811), 1 Car & Kir 469, 480). The commissioner need not be called as a witness, if the jurat of the affidavit states that the affidavit was taken before him by the defendant, and if his handwriting and that of the defendant are proved (*R v Morris* (1761), 2 Burr 1189, *R v Spruer* (1824), 1 C & P 260).

(*r*) *R v Muntton* (1829), 3 C & P 498. See *R v Stevens* (1826), 5 B & C 246.

(*s*) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 19. As to commencing prosecutions for perjury while the proceeding in which the perjury is alleged to have been committed is still pending, see *R v Ingham* (1849), 14 Q B 396, *R v Ashburn* (1837), 8 C & P 50, *Reddell v Rutler* (1837), 8 C & P 337.

(*a*) *E 7*, Statutory Declarations Act 1835 (5 & 6 Will 4, c 62). As to false declarations in matters relating to certain branches of the revenue, see s 5, as to excise, Revenue Act 1869 (32 & 33 Vict c 14), s 25, as to customs, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 168, as to taxes, Taxes Management Act, 1880 (43 & 44 Vict c 19), s 66. See also pp 536, 553, 557, *post*.

(*b*) Statutory Declarations Act, 1835 (5 & 6 Will 4, c 62), s. 21. See also Commissioners for Oaths Act, 1889 (52 Vict. c 10), ss 7, 11, which provides that any person making a false oath or declaration in accordance with the provisions of that Act shall be guilty of perjury. The Act applies (s 1 (2)) to affidavits and declarations made for the purposes of any court or matter in England including matters ecclesiastical or relating to applications for notarial faculties or the registration of any instrument whether under an Act of Parliament or otherwise. These offences are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1).

## PART X.—OFFENCES AGAINST THE GOVERNMENT.

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The punishment for such an offence, where there is no other expressly mentioned, is fine and imprisonment without hard labour (c).

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**989** It is declared by statute (d) to be unlawful, and is therefore a misdemeanour punishable with fine and imprisonment without hard labour, for a justice of the peace or other person to administer, or cause to be administered, any oath, affidavit, or solemn affirmation touching any matter whereof such justice or other person had no jurisdiction or cognisance by some statute than in force

False oath  
in a proceed-  
ing not  
judicial.

Although a false oath taken before anyone who has authority to administer an oath, but not taken in a judicial proceeding, does not properly speaking constitute perjury, the taking of such a false oath is a misdemeanour at common law, if it be done with an illegal or improper object and in a matter of public concern (e), and upon an indictment for perjury the defendant may be convicted of such misdemeanour, if the indictment states facts sufficient to constitute the offence of taking a false oath (f)

The punishment for taking such a false oath is imprisonment without hard labour and fine

### SUB-SECT. 3.—Subornation of Perjury.

**990** Everyone is guilty of the common law misdemeanour of subornation of perjury who procures another person to take a false oath amounting to perjury

Subornation  
of perjury.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (g)

(c) The punishment for delivering a declaration in which the particulars required by the Revenue Act 1869 (32 & 33 Vict. c. 14), are not fully and truly stated is a penalty of £20 (*ibid.*, s. 25), under the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36) the penalty is £100 (*ibid.*, s. 168), under the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), the punishment is imprisonment without hard labour for not more than six months and a penalty of treble the amount of the duty for which the offender has been charged (*ibid.*, s. 66)

(d) Statutory Declarations Act, 1835 (5 & 6 Will. 4. c. 62), s. 13. There is an exception in favour of oaths required by the laws of foreign countries to give validity to instruments in writing to be used in such countries, as to the indictment in such a case, see *R v Nott* (1841), 4 Q. B. 768. As to unlawful oaths, see p. 465, *ante*

(e) The following are instances —*R v Chapman* (1849), 1 Den. 432 (false oath before a surrogate to obtain a marriage licence), *Re Rushdon, Ex parte Overton* (1815), 2 Rose, 267 (affidavit in support of petition to stay a certificate in bankruptcy), *R v Hodgkins* (1869), L. R. 1 Q. B. 212 (affidavit for the purpose of getting a bill of sale filed). The making of a false affidavit for this purpose is now made perjury by the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 17. See title **BILLS OF SALE**, Vol. III, p. 48

(f) *R v Hodgkins, supra*

(g) Perjury Act, 1728 (2 Geo. 2, c. 25), s. 2, Penal Servitude Act, 1817 (20 & 21 Vict. c. 3), s. 2, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). If a solicitor who has been convicted of perjury, subornation of perjury, forgery, or common barratry, afterwards acts as solicitor or agent in any action, the judge of the court in which the action is brought may inquire into the matter in a summary way and sentence him to penal servitude for seven years (Frivolous Arrests Act, 1726 (12 Geo. 1, c. 29), s. 4, made perpetual by the since repealed stat. (1747) 21 Geo. 2, c. 3).



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To attempt or conspire to persuade or incite a person to give false evidence, although not amounting to subornation of perjury unless the perjury is actually committed, is a misdemeanour at common law punishable by fine and imprisonment (*a*).

Attempting, by the manufacture of false evidence, to mislead a judicial tribunal and to pervert the course of justice is a common law misdemeanour, whether or not the tribunal is misled and even if it does not in fact sit (*b*).

**Indictment**

**991.** In an indictment for subornation of perjury or for corrupt bargaining or contracting with any person to commit perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take or subscribe any oath, affirmation, declaration, affidavit, deposition, notice, certificate, or other writing, it is sufficient, wherever such perjury or other offence has been committed, to allege the offence of the person who actually committed it in the same manner as in an indictment for perjury (*c*), and then to allege that the defendant unlawfully, wilfully, and corruptly caused and procured such person to do and commit the said offence in manner and form aforesaid. Where such perjury or other offence has not been committed, it is sufficient to set forth the substance of the offence charged upon the defendant without averring any of the matters unnecessarily to be averred in the case of perjury (*d*).

**SUB-SECT. 4 —Interfering with Witnesses**

**Tampering**  
**with**  
**witnesses**

**992** It is a common law misdemeanour, with the object of defeating the course of justice, to dissuade, intimidate, or prevent, or try to dissuade, intimidate, or prevent, a person who is bound to give evidence in a criminal matter from doing so (*e*).

The punishment for this offence is imprisonment with or without hard labour and fine (*f*).

It is a high contempt of court, punishable, either summarily by the court in which the matter is pending or on indictment, by fine and imprisonment with or without hard labour, to use such violent and inflammatory language at public meetings or otherwise as is

(*a*) 1 Hawk P C, c 27, ss 9, 10, *R v Darby* (1702), 7 Mod. Rep 100, 101, *R v Higgins* (1801), 2 East, 5, 17, stat (1562-3) 5 Eliz c 9. As to dissuading witnesses from giving evidence, see p 600, *post*.

(*b*) *R v Vrones*, [1891] 1 Q B 360, C C R (fraudulently tampering with samples which would have been placed before an arbitrator, if an arbitration had taken place), *Omealy v Neuell* (1807), 8 East, 364 (putting forward a false affidavit sworn abroad, upon which perjury could not be assigned).

(*c*) See p 493, *ante*.

(*d*) Criminal Procedure Act, 1851 (14 & 15 Vict. c 100), s 21. As to the matters unnecessary to be averred in an indictment for perjury, see p 493, *ante*.

(*e*) 1 Hawk P C, c 6, s 15, Stephen, Digest of the Criminal Law, 113, *R v Lewley* (1731), 2 Stra. 904, *R v Loughran* (1839), 1 Craw & D 79, *Shaw v Shaw* (1861), 31 L J. (P M & A) 35, *Re Hooley (Rucker's Case)*, (1898), 79 L T 308. As to subornation of perjury, see p 497, *ante*.

(*f*) See Criminal Procedure Act, 1851 (14 & 15 Vict. c 100), s 29, *R v Stevenston* (1802), 2 East, 362. This offence is triable at quarter sessions.



likely to influence the minds of witnesses who will be called upon to give evidence in a pending prosecution (g).

**993** Everyone is by statute (h) guilty of a misdemeanour who threatens or punishes or injures, or attempts to punish or injure, any person for having given evidence upon any inquiry held under a royal commission or by a parliamentary committee or pursuant to any statutory authority, unless such evidence was given in bad faith

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—  
Witnesses at  
inquiries.

The punishment for this offence is a fine of £100 or imprisonment without hard labour for not more than three months (i).

#### SUB-SECT. 5—Barratry and Maintenance and Champerty

**994** A barrator is a common mover and exciter, or maintainer, of suits and quarrels either in the courts themselves or in the country, as by a disturbance of the peace, or where the right to the possession of land is in controversy in taking or keeping possession by force, subtlety, or deceit, or by making false inventions and sowing calumnies, rumours, and reports whereby discord and disquiet may grow between neighbours (k)

Barratry.

The offence is a common law misdemeanour punishable by fine and imprisonment without hard labour (l)

**995** Maintenance and champerty (m) are misdemeanours at common law (n), and specific punishments for various offences of

Maintenance

(g) *R v Onslow and Whalley* (1873), 12 Cox, C C 353, and see title **TRIAL OF COURTS**, Vol VII, p 290. The offence is triable at quarter sessions.

(h) Witnesses (Public Inquiries) Protection Act, 1892 (55 & 56 Vict c 64), s 2. The case may be heard and determined by a court of summary jurisdiction, unless the prosecutor or the defendant wishes it to be sent for trial (s 3). This offence is triable at quarter sessions, except, it seems, in the metropolitan area (*ibid*).

(i) *Ibid*, s 2. The offender may also be ordered to pay compensation to the person injured (s 4).

(k) Co Litt 368 a. No one can be a barrator in respect of one act only. The indictment must charge the defendant with being a common barrator (1 Hawk P C, c 27, s 5), particulars of the specific instances intended to be proved must be given to the defendant (*ibid*, s 13), and the prosecution will not be allowed to give evidence of any other instances than those specified in the particulars (*D'Ancón v Stuart* (1787), 1 Term Rep 748, 754). With the exception of *R v Bellgrave* (Guildford Assizes, 1889, referred to in Archbold, Criminal Pleading, p 1079) it is believed that there has not been a prosecution for barratry for many years. Barratry is also used in another sense to mean a fraud committed by the master or seamen of a ship (see *Earle v Rowcroft* (1806), 8 East, 126, and title **INSURANCE**). Barratry of this kind is a crime (*Todd v Ruckus* (1816), 1 Stark 240), but is not indictable *eo nomine*, but under the name of some such offence as larceny, fraud, malicious injury, or piracy.

(l) 1 Hawk P C, c 27, s 14. A person who, after being convicted of barratry, practises as a solicitor in the High Court, may be punished as a felony by that court and sentenced to seven years' penal servitude, or to imprisonment with or without hard labour for two years (Trivial Offences Act 1723 (12 Geo 1, c 29), s 4, made perpetual by stat (1747) 21 Geo 2, c 3). *Quære*, whether barratry is triable at quarter sessions.

(m) As to what constitutes maintenance and champerty, and the exceptions to the rule that they are illegal, see title **ACTION**, Vol. I, p 51.

(n) 1 Hawk P C, c 27, s 4, *Perrell v. Watson* (1611), 8 M & W 691, 700.

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this character are provided by ancient statutes (o), which still remain unrepealed, but which have fallen into disuse (p).

It is lawful for persons to combine together to prosecute a guilty person or one against whom there are reasonable grounds of suspicion (q); but, in cases in which the maintenance of civil suits is illegal (r), combinations to maintain such suits are punishable, whether they are well founded or not, every conspiracy to commit an illegal act being an indictable misdemeanour (s).

**SUB-SECT 6—Conspiracy to obstruct the Course of Justice**

Conspiracy to  
obstruct the  
course of  
justice.

**996** It is a misdemeanour at common law for two or more persons to conspire together (t) to obstruct, defeat, pervert or prevent the course of public justice (u), either by bringing a false criminal charge against a man (a) or by preventing a witness from giving evidence in a criminal prosecution or agreeing with him that he should not attend at the trial for that purpose (b), or by publishing matter calculated to interfere with the course of justice or to pervert the minds of the court or of the jurors (c), or by producing in court evidence known to be false (d).

The punishment for the offence is fine and imprisonment with or without hard labour (e).

It is no defence to a charge of conspiracy to accuse of a crime that the indictment or other proceedings preferred or intended to be preferred were insufficient, or that the court had no jurisdiction, or that the charge was not a grave one (f).

(o) *Stats* (1275) 3 Edw 1, cc 25, 28 (stat Westminster the First), (1285) 13 Edw. 1, c 49 (stat Westminster the Second), (1300) 28 Edw 1, c 11, (1305) 33 Edw 1, (1327) 1 Edw 3, c 14, (1377) 1 Ric 2, c 4, (1383) 7 Ric 2, c 15, (1540) 32 Hen 8, c 9

(p) There has been no prosecution for such an offence for many years

(q) *R v Best* (1701), 1 Salk 174, 1 Hawk P C, c 27, s 7

(r) See title ACTION, Vol I, pp 51 *et seq*

(s) *R v Opie* (1670), 1 Wms Saund (ed 1845) 300, k, where the information was for a conspiracy to obtain a verdict in a civil action by bribing two persons to procure themselves to be sworn as jurors

(t) As to conspiracy, see p 260, *ante* As to compounding offences, see p 303, *post*

(u) See Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 29

(a) Stat (1305) 33 Edw 1, c 4 (Ordinacio de Conspiratoribus), *R v Rispal* (1762), 3 Burr 1320, *R v Spragg* (1760), 2 Burr 993 If the object of the conspiracy to bring a criminal charge be to extort money, and the indictment so alleges, it is immaterial whether the charge is true or false (*R v Hollingberry* (1825), 4 B. & C 329, *R v Jacobs* (1845), 1 Cox, C C 173) See also *R v M. Daniel* (1755), Fost 121, 19 State Tr 809, where the person accused of the crime connived at the accusation and was a party to the conspiracy, the object being fraudulently to obtain a reward

(b) *R v Sturinton* (1802), 2 East, 362, *R v Hamp* (1852), 6 Cox, C C 167

(c) *R v Tibbitts*, [1902] 1 K B 77, 90, C C R.

(d) *R v Maubey* (1796), 6 Term Rep 619, 635, where the defendants were convicted of conspiracy to put in evidence a false certificate under their hands as justices with reference to the repair of a highway A conspiracy to charge a man falsely with being the father of a bastard child is indictable (*R v. Best* (1704), 1 Salk 174)

(e) Criminal Procedure Act, 1851 (14 & 15 Vict. c 100), s 29 A conspiracy to commit perjury or subornation of perjury, or to forge evidence, or to destroy wills or evidence of title to realty, is not triable at quarter sessions, but conspiracies to defeat the ends of justice by other means are triable in such a court (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(f) 1 Hawk. P. C., c 27, s 3, *R v Rispal, supra* So where a man maliciously

**997.** Everyone is guilty of a misdemeanour at common law who destroys or disposes of a dead body in order to prevent an inquest being held, in a case where an inquest may lawfully be held (*g*)

The punishment for this offence is fine and imprisonment without hard labour (*h*).

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to the  
Administra-  
tion of  
Justice.

#### SUB SECT 7—Contempt of Court

**998.** It is a contempt of any court of justice to disturb and obstruct the court by insulting it in its presence and at a time when it is actually sitting (*i*), or to disobey its orders or warrants made within its jurisdiction (*j*), or to publish matter likely to impede the course of justice by prejudicing parties before their cause is heard, or to intimidate or influence jurors or witnesses (*k*), or to scandalise the court itself

Contempt of  
court.

Contempt of court is a misdemeanour at common law and punishable by fine and imprisonment without hard labour (*l*)

Contempt of a court of record is also punishable summarily by committal or attachment by that court, and this is the course usually taken (*m*). But in all cases the remedy by indictment remains

prefers an indictment, he is liable to an action, although the indictment may have been defective (*Pippet v Hearn* (1622), 5 B & Ald 631)

(*g*) *Anon* (1702), 7 Mod Rep 10, *R v Price* (1884), 12 Q B D 217, *R v Stephenson* (1884), 13 Q B D 331, 338, C C R. As to cases in which an inquest may lawfully be held, see title CORONERS, Vol VIII, p 249

(*h*) This offence is triable at quarter sessions

(*i*) *R v Harrison* (1638), Cro Car 503, *Ex parte Marlborough* (Dule) (1844), 5 Q B 955, and see the judgment of the court delivered by CLAVE, J., in *R v Brompton County Court Judge*, [1894] 2 Q B 111. HOLT, C.J., appears to have thought that a more insolent expression used to a judge in court was not indictable (*R v Rogers* (1702), 7 Mod Rep 28, and see *R v Nun* (1815), 10 Mod Rep 186), and that the proper punishment was to proceed summarily for contempt. But see 2 Hawk P C, c 22, s 35. In the case of a contempt of a court not of record, the only remedy is to order the removal of the offender or to proceed by indictment or information. The court itself has no power to commit, and the King's Bench Division of the High Court of Justice has no summary power in such a case (*Ex parte Hyndman* (1886), 2 T L R 351). See *Willis v Maclellan* (1878), 1 Ex D 376, *R v Webb, Ex parte Hawks*, *Times*, 24th January, 1899, p 13, as to criminal informations for libel in such a case, see *R v Watson* (1878), 23 Sol Jo 86, *Ex parte Radnor* (Earl) (1869), 33 J P 740, *R v Masters* (1889), 6 T L R 44, *R v Russell, Ex parte Morris* (1905), 69 J P 450

(*j*) As to the powers of the sheriff to arrest those who resist him in the execution of writs, see Sheriffs Act, 1887 (50 & 51 Vict. c 55), s. 8 (2)

(*k*) See pp 489, 498, *ante*

(*l*) Dickinson's Quarter Sessions, 6th ed 300. The offence is triable at quarter sessions, *ibid*

(*m*) Upon the subject of contempt of court generally and its summary punishment, see title CONTEMPT OF COURT, Vol VII, pp 280, 307. Nearly all the cases in which the offence has been punished on indictment are where the orders of justices in quarter or petty sessions have been disobeyed. See *R v Robinson* (1759), 2 Burr 799, 804 (order of quarter sessions to maintain children); *R v Johnson* (1816), 4 M & S 515 (order of quarter sessions on treasurer to pay costs of a prosecution), *R v Jeyes* (1835), 3 Ad & EL 416 (similar order by a court of

**SECT 4**

**Offences  
relating  
to the**

**Administra-  
tion of  
Justice**

In the case of disobedience of an order by a ministerial officer the proper remedy is by indictment, or by attachment if the court has power to attach (*n*)

**999** A person cannot be found guilty of disobedience to the order of a court, if the order was made in a matter in which the court making it had no jurisdiction (*o*), but if there was jurisdiction to make the order, the question whether it was rightly made on the merits will not be considered (*p*)

The defendant may give in evidence by way of excuse that he has done everything in his power to obey the order (*q*)

Personal service of the whole order, or a copy, must have been made on the defendant (*r*).

**Insulting  
magistrates  
and judges**

**1000** An indictment or information will not lie for insulting words spoken to or of a magistrate when he is not sitting as such, unless the tendency of the words is to provoke a breach of the peace (*s*), but scandalising a judge by personal scurrilous abuse of him as a judge, or any act done or writing published which is calculated to bring a court into contempt or to lower the authority of the judge of the court, is contempt of court, and is punishable by indictment or information as well as by the summary process of committal (*t*)

*assize*), *R v Bishoy* (1849), 1 Den 416 (bastardy order made at petty sessions), see also *R v Ferrall* (1850), 2 Den 51, *R v Sewell* (1845), 8 Q B 161 (order of restitution of premises by justices of assize under the Distress for Rent Act, 1737 (11 Geo 2, c 19, s 17)), *R v Walker* (1875), 13 Cox, C C 94 (order against waste made by the Epping Forest Commissioners under the Epping Forest Amendment Act 1872 (35 & 36 Vict c 95), s 5) The last mentioned case is, however, rather an illustration of the principle that it is a misdemeanour at common law to obstruct the due execution of an Act of Parliament or of the powers given by it, as to which see also *R v Smith* (1780), 2 Doug (K B) 411 See p 232 *ante*

(*n*) An indictment or attachment is the proper proceeding, and a mandamus will not be granted when a public officer has received an order from his masters or any competent authority and disobeys it, when there is no such order and an act is required to be done, a mandamus will be granted, and when there is such an order and the ministerial officer is only put forward as the nominal party and there are other persons who are really to be acted on by the mandamus, the mandamus will be granted (*R v Bristow* (1795) 6 Term Rep 168, *R v Surrey (County Treasurer)* (1819), 1 Chit 650, *R v Wood Ditton (Highway Surveyors)* (1849), 18 L J (M C) 218, see also *R v Payn* (1837), 6 Ad & El 392, 401, *R v Oswestry (Treasurer)* (1848) 12 Q B 239)

(*o*) *R v Hollis* (1819), 2 Stark 536, *R v Cooper* (1825), 3 B & C 857

(*p*) *R v Mytton* (1785), 4 Doug (K B) 333, *R v Gilkes* (1827), 3 C & P 52

(*q*) *R v Gash* (1817) 1 Stark 441, 445

(*r*) *R v Kingston* (1806), 8 East, 41, *R v Jones* (1840), 2 Mood C C 171.

(*s*) *Ex parte Chyngman* (1836), 4 Ad & El 773, and see *Ex parte Marlborough (Duke)* (1844), 5 Q B 955, *R v Revel* (1721), 1 Stra. 420, *R v Pocock* (1741), 2 Stra. 1157, *R v Waltje* (1809), 2 Camp 142

(*t*) *R v. Read and Hugginson* (1742), 2 Atk 469, 471, *McLeod v St. Aubyn*, [1899] A C 549, 561, P C, *R v. Gray*, [1900] 2 Q B 36, 40, 41 But honest, though adverse, criticism in temperate language of the conduct of a judge is permissible, and much latitude will in such a case be allowed (*R v. Gray, supra*, at p. 40). And see title CONTEMPT OF COURT, Vol. VII, pp 283 *et seq.*

**SECT. 5—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.**

**SUB-SECT 1—Misprision**

**1001** Misprision of treason is a common law misdemeanour, and consists in the bare knowledge and concealment of high treason without any degree of assent thereto (*u*)

A mere general knowledge that a rebellion is intended without any knowledge of the persons engaged or of particulars of the design is not sufficient to constitute the offence (*x*)

A person knowing that treason is plotted or committed is bound to reveal it as soon as he can to a judge of assize or a justice of the peace (*y*)

Two witnesses are necessary for a conviction, as in treason (*a*)

The punishment for misprision of treason is imprisonment for life, with forfeiture of goods and of the profits of lands for life (*b*)

**1002** Misprision of felony is a common law misdemeanour, and consists of the concealing of a felony by a person who knows of but does not consent to it

This offence is punishable by fine and imprisonment without hard labour (*c*) In the case of an officer, as a sheriff or bailiff, the term of imprisonment is fixed at one year, as well as a ransom at the King's pleasure (*d*)

**SUB SECT 2—Compounding Offences**

**1003** It is a misdemeanour at common law (*e*) to compound a felony, i.e., to agree in consideration of the return of goods stolen or of any other advantage not to prosecute a person who has committed a felony

The punishment for the offence is fine and imprisonment without hard labour (*f*)

It is no offence to abstain from prosecuting (*g*), or simply to promise not to prosecute, or to take back goods which have been

(*u*) Stat (1554) 1 & 2 Ph & Mar c 5, s 8, 1 Hawk P. C., c 5, s 2, 1 Hale P. C. 371 And see title CONSTITUTIONAL LAW, Vol VI, p 353 As to infants, see note (*g*) on p 240, *ante*

(*x*) Kel 21

(*y*) 1 Hale, P. C. 372 It would probably now be sufficient, if the information were given to a responsible officer of police

(*a*) 1 Hale, P. C. 300

(*b*) 2 Hawk P. C., c 48, s 15, 1 Hale, P. C. 374 The Forfeiture Act, 1870 (33 & 34 Vict c 23), s 1, appears not to apply to this offence, which is neither treason nor felony This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(*c*) 1 Hale, P. C. 374 The offence is triable at quarter sessions As to infants, see note (*g*) on p 240, *ante*

(*d*) *Ibid* There has been no prosecution for this offence for many years The expression "misprision of felony" has "somewhat passed into desuetude" (*Williams v Bayley* (1866), L. R. 1 H. L. 200, at p 220, per Lord WESBURY, but the fact that mere concealment of a felony without any participation in it is still a criminal offence may affect the validity of a transaction based on such concealment (see *Williams v Bayley* (1866), L. R. 1 H. L. 200, 220)

(*e*) 3 Co Inst. 134, 1 Hawk P. C., c 7, ss. 5, 6, 7. The offence was anciently known as *theft-bote*

(*f*) The offence is triable at quarter sessions

(*g*) See *supra*.

**SECT. 5.**  
**Offences**  
**relating to**  
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**etc.**

**Misprision of**  
**treason.**

**Misprision of**  
**felony.**

**Compounding**  
**felony.**

**SECT. 5**  
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stolen, unless they are returned in consideration of a promise to favour the thief either by not prosecuting him or otherwise (*h*)

It is the agreement not to prosecute which constitutes the offence, and it is immaterial whether there is or is not a subsequent failure to prosecute (*i*). A person may be convicted of the offence of compounding a larceny although he is not the owner of the stolen goods (*j*).

**Compounding**  
**misdemeanour**

An agreement to compound a misdemeanour of a public nature, even if made with the consent of the judge at the trial, is unlawful in the sense that such an agreement can give rise to no civil right and no action can be brought upon it (*k*), in some cases, when the object of the agreement is to obstruct or prevent the course of justice, the persons who enter into such an agreement are, it seems, guilty of a common law misdemeanour (*l*)

**Compounding**  
**of a penal**  
**action.**

**1004** It is by statute (*m*) a misdemeanour for a common informer or plaintiff in an action on a penal statute to compound or agree with a person alleged to have offended against such statute, until the defendant has made his answer in court, and such compounding is then only lawful with the consent of the court

The offence may be committed, even although proceedings for a penalty have not been commenced (*n*), and even if there has been no offence against the penal statute, if money is taken to prevent threatened proceedings under the statute (*o*)

The offence is not committed, if the infringement of the penal statute is only cognisable by magistrates (*p*).

The punishment for this offence is fine or imprisonment without hard labour or both, and the offender is upon conviction disqualified from thereafter suing upon any penal statute (*q*)

#### SUB-SECT. 3 — *Corrupt Rewards*

**Corrupt**  
**taking of**  
**reward for**  
**restoration**  
**of stolen**  
**property**

**1005** Everyone is by statute (*r*) guilty of a felony who corruptly takes any money or reward directly or indirectly under pretence or

(*h*) 1 Hawk P C, c 7, s 7

(*i*) *R v Burgess* (1885), 16 Q B D 141, O C R, but see *R v Stone* (1830), 4 O. & P 379, where an acquittal was directed because after the compounding the defendant had in fact prosecuted the felon to conviction, which case, however, cannot since *R v Burgess, supra*, be considered as of any authority

(*j*) *R v Burgess, supra*

(*k*) *Collins v Blantern* (1767), 2 Wils 341, 1 Smith, L C, 11th ed., 369, *Kear v Leeman* (1844), 6 Q B 308, (1846), 9 Q B 371, Ex. Ch., *Windhall Local Board of Health v Vint* (1890), 45 Ch D 351, C A

(*l*) See per WILMOT, O J, in *Collins v Blantern, supra*, at p 373 "this is an agreement to stifle a prosecution for wilful and corrupt perjury, a crime most detrimental to the commonwealth, for it is the duty of every man to prosecute, appear against, and bring offenders of this sort to justice. Many felonies are not so enormous offences as perjury, and therefore to stifle a prosecution for perjury seems to be a greater offence than compounding some felonies." It is probable that many cases of this kind may be punishable as conspiracies to defeat the ends of justice (see p 500, *ante*).

(*m*) Stat. (1575-6) 18 Eliz c 5, ss. 4, 5

(*n*) *H. v. Gilday* (1805), Russ. & Ry 84.

(*o*) *R. v. Best* (1838), 9 O. & P 368.

(*p*) *R v. Crisp* (1818), 1 B & Ald. 283.

(*q*) Stat. (1575-6) 18 Eliz c 5, ss. 4, 5, Pillory Abolition Act, 1816 (46 Geo 3, c. 138), s 2 The offence is triable at quarter sessions.

(*r*) Larceny Act, 1861 (24 & 25 Vict c. 96), s 101 Whoever (1) publicly

upon account of helping any person to any chattel, money, valuable security or other property which has by any felony or misdemeanour been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, unless the person taking such reward shall have used due diligence to cause the offender to be brought to trial for his offence.

The reward is "corruptly" taken if it is received dishonestly, under false pretences, and with a false and sinister design, and with no intention to detect or discover the thief (s). It is unnecessary to show that the reward was paid before the property was restored, if it was so paid in pursuance of a previous agreement to that effect (t).

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years, if the offender is a male under eighteen years, whipping may be also ordered (u).

**1006** Everyone is by statute (x) guilty of a misdemeanour who corruptly takes any money or reward under pretence of aiding any person to recover a dog which has been stolen or is in the possession of a person not the owner.

The punishment for this offence is imprisonment for not more than eighteen months with or without hard labour (y).

Sect. 4  
Offences  
relating to  
Arrest,  
Prosecution  
etc.  
Meaning of  
corruptly.

Dogs.

SUB-SECT 4 — *Resisting or obstructing a Peace Officer (a)*

**1007.** Everyone is by statute (b) guilty of a misdemeanour who (1) assaults, resists, or wilfully obstructs any peace officer in the

Resisting  
peace officer.

advertises a reward for the return of any property (see *Mirams v Our Inns Publishing Co*, [1901] 2 K B 561, C A) which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked, or (2) makes use of any words in any public advertisement purporting that a reward will be paid for any property stolen or lost without seizing or making inquiry after the person producing it, or (3) offers in any such public advertisement to return to any pawnbroker or other person who may have bought or lent money upon any property stolen or lost the money so paid or lent, or any other reward for the return of such property, or (4) who prints or publishes any such advertisement, is liable to forfeit £50 and costs to any person who will sue for it (Larceny Act, 1861 (24 & 25 Vict c 96), s 102). If such an action is brought against the printer or publisher of a newspaper, it must be commenced within six months, and the assent in writing of the Attorney-General or Solicitor-General must be first obtained (Larceny (Advertisements) Act, 1870 (33 & 34 Vict. c 65), s 3).

(s) *R v King* (1844), 1 Cox, C C 36, per TINDAL, C J., decided on a similar provision in 7 & 8 Geo 4, c 29, s 58, see also *R v Hart* (1843), 2 I. T. (n s) 248, *R v Pascoe* (1849) 3 Cox, C C 462, C C R., in which, the jury having found that the prisoner knew the thieves and assisted the prosecutrix as her agent in endeavouring to purchase the stolen property from them, not meaning to bring the thieves to justice, the court held that this finding established all the facts necessary to constitute the offence, see also *R v Ledbetter* (1822), 1 Mood. C C 76.

(t) *R v O'Donnell* (1857), 7 Cox, C C 337, C C R. (Ir).

(u) Larceny Act, 1861 (24 & 25 Vict c 96), s 101, Penal Servitude Act 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions and to the power to require the accused person to enter into recognisances see p 412, ante.

(x) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 20.

(y) *Ibid.* The offence is triable at quarter sessions.

(z) See also p 573, post.

(b) Offences against the Person Act, 1861 (24 & 25 Vict c. 100), s 38. This offence is triable at quarter sessions.

**SECT. 5**  
**Offences**  
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**Arrest,**  
**Prosecution**  
**etc.**

due execution of his duty, or any person acting in aid of such officer, or (2) who assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence

To warn a person with a view to prevent him from committing an offence is not an obstructing of a police officer who is seeking to obtain evidence upon which to prosecute him (c) It is doubtful whether the obstruction to be punishable need be either a physical act or a threat (d).

A person resisting a peace officer cannot be convicted of this offence, unless the officer was acting strictly within the limits of his powers and legal duty (e) Although a person is entitled to resist an arrest which a constable is not authorised to make, he is guilty of an assault if he uses more violence than is reasonably necessary for the purpose (f) It is not necessary to show that the defendant knew that the person arresting him was a police constable (g)

The punishment for such offence is imprisonment for not more than two years with or without hard labour (h).

**Refusing to**  
**assist a**  
**peace officer**

**1008** Every person is guilty of a common law misdemeanour who refuses to assist a peace officer in the execution of his duty in preventing a breach of the peace, when there is a reasonable necessity for calling upon such person, and such person is called upon to assist the officer and is not prevented by any physical

(c) *Bastable v Little*, [1907] 1 K B 59

(d) If a policeman in seeking for information which might lead to the conviction of the perpetrators of a crime is wilfully misled by false information, the person giving the false information would seem to be committing an offence against the Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 38 (*Bastable v Little*, *supra*, per DARLING, J., at p 63)

(e) In the following cases the resistance was held to be justifiable — *R v Sanders* (1867), L R 1 C O R 75 (arrest by a county police constable instead of by a parish constable), *R v Crompton* (1880), 5 Q B D 341, C C R (arrest in the city of W., which had a separate commission of the peace, by constables of the county of W. under a warrant not backed by a justice of the city), *Codd v. Cobe* (1876), 1 Ex D 352 (arrest under warrant for offence less than felony, the officer not having the warrant with him), *R v Prebble* (1858), 1 F & F 325 (resisting constable who was clearing a public-house, there being no nuisance or danger of a breach of the peace or any illegal act committed), see also *R v Spencer* (1863), 3 F & F 857, *R v Light* (1857), Dears & B 332, *R v Marsden* (1868), L R 1 C O R 131, *R v Roxburgh* (1871), 12 Cox, O C 8

(f) *R v Mabel* (1840), 9 C & P 474

(g) *R v Forbes* (1865), 10 Cox C C 362, per RUSSELL GURNEY, Recorder of London, *R v Malwell* (1909), 73 J P 176, C C A

(h) Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 38 This offence is triable at quarter sessions

A person who commits an assault upon a constable in the execution of his duty may also be dealt with summarily and sentenced to a fine of £20 or imprisonment with or without hard labour for six months, or, upon a second conviction within two years, to nine months' imprisonment with or without hard labour (Prevention of Crimes Act, 1871 (34 & 35 Vict. c 112), s 12); see also, as to the summary jurisdiction, Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c 75), s 2 Anyone may apprehend any person found committing an indictable offence in the night, a person so apprehended who assaults or offers any violence to anyone authorised to apprehend him is guilty of a misdemeanour, the punishment for which is three years' imprisonment with or without hard labour under the Prevention of Offences Act, 1861 (14 & 15 Vict c 19), s 12



impossibility or lawful excuse (i). It is immaterial that the assistance would have been useless if it had been rendered (j).

The punishment for this offence is fine and imprisonment without hard labour (k).

SECT. 3.  
Offences  
relating to  
Arrest,  
Prosecution  
etc.

SUB-SECT. 5—*Offences relating to Prisons etc*

(1.) *Prison Breach*

**1009** A person is guilty of the common law offence of breach of prison who, while lawfully in the custody of the law for any cause whatever, whether criminal or civil, and whether he is actually within the walls of a prison or in the custody of any person who has lawfully arrested him, escapes from that custody by the use of any force (l). If the prisoner is under detention upon a charge of treason or felony, whether he has been convicted or not, the breach of prison is a felony, the punishment is then penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (m), if the detention is upon a lesser charge, breach of prison is a misdemeanour (n), the punishment in that case is fine and imprisonment with or without hard labour (o).

Breach of  
prison

A prisoner may be convicted of breach of prison, although he has not been tried for the offence in respect of which he was committed (p), but if he is first tried on indictment for the latter offence and acquitted, it seems that he cannot afterwards be convicted of the breach of prison (q).

(i) *R v Brown* (1841), Car & M 314, *R v Sherlock* (1866), 1, R 1 C O R 20. There appears to be no modern authority that there is a legal duty to afford physical assistance to the police to arrest in cases other than those involving a then existing or threatened breach of the peace, and in the older text-books the obligation seems to be confined to the case of affrays. See Dalton, Country Justice (ed 1705), c 8, p 35, and Ritson on "The Office of Constable" (1815) at p 40.

(j) *R v Brown*, *supra*.

(k) This offence is triable at quarter sessions. As to resistance to a sheriff, see Sheriffs Act, 1887 (50 & 51 Vict c 55), s 8 (2).

(l) 2 Hawk P C, c 18, ss 1, 4, *R v Haswell* (1821), Russ & Ry 408. If the person detained leaves the prison or escapes from custody without the use of force, the offence is called an "escape", see p. 508, *post*.

(m) Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1, (1295), 23 Edw 1, statute *de frangentibus prisonam*.

(n) 2 Hawk P C, c 18, ss. 1, 8, 15, 16. It has been doubted whether there can be a conviction for breach of prison, if the committal is for a felony which has not in fact been committed by anyone (*ibid* s 15, 1 Hale, P C 610, but see *R v Waters* (1873), 12 Cox, C C 390). It is submitted that this can only depend upon whether the prisoner was at the time in lawful custody or not. If, for instance, he were arrested by a private person upon suspicion of a felony which had not been committed, he could not be convicted of breach of prison, if he freed himself from the custody of that person.

(o) Criminal Procedure Act, 1851 (14 & 15 Vict. c 100), s 29. Breach of prison is triable at quarter sessions.

(p) 2 Co Inst. 592.

(q) 1 Hale, P C 611. Where a prisoner upon a charge of felony made his escape while under remand before the magistrates, and was afterwards recaptured and the original charge then dismissed, it was held that he might nevertheless be indicted for the breach of prison, the dismissal by the justices not being equivalent to an acquittal on an indictment (*R v Waters* (1873), 12 Cox, C C (MARTIN, B) 390).

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**Offences**  
**relating to**  
**Arrest,**  
**Prosecution**  
**etc.**

No breach of prison amounts to felony, unless the prisoner actually escapes<sup>(r)</sup>. There must be an actual breaking and the use of some real force or violence, but the offence is committed even though the breaking may have been done accidentally in the course of the escape<sup>(s)</sup>.

If a prisoner breaks out of prison to save his life, as in the case of fire, he is not guilty of breach of prison, but it is otherwise if he himself has fired the prison<sup>(t)</sup>.

**Vag-rants.**

**1010** By statute<sup>(u)</sup> a person breaking or escaping out of any place of legal confinement before the expiration of the term for which he is committed by virtue of the Vagrancy Act, 1825<sup>(v)</sup>, is to be deemed an incorrigible rogue and liable as such to be committed to prison until the next quarter sessions. At quarter sessions he may be ordered to be imprisoned with or without hard labour for not more than a year and to be whipped<sup>(a)</sup>.

(11.) *Escape*

**Escape.**

**1011** At common law every person is guilty of an escape<sup>(b)</sup> who, (1) being a prisoner, without force, escapes from custody or prison<sup>(c)</sup>, (2) being an officer, intentionally or negligently allows a prisoner to escape from his custody, (3) being a private person, and having a person in his lawful custody, permits him to escape. In all these cases it is immaterial whether the escape is before or after conviction, or whether the prisoner was guilty or not, or whether he was at the time of the escape actually in prison or on his way there or detained for the purpose of being sent there.

**By prisoner**

If a prisoner escapes from any lawful custody, without force but by artifice or similar means, he commits a common law misdemeanour punishable by fine and imprisonment<sup>(d)</sup>.

**By officer.**

**1012** To render an officer guilty of an escape, there must first have been an actual and lawful arrest. If the arrest was of such a

(r) 2 Hawk P O, c 18, s 11 But an attempt, by breaking the prison, to escape will be a misdemeanour

(s) 2 Hawk P O, c 18, s 8, *R v Hawell* (1821), Russ & Ry 458.

(t) 1 Hale, P C 611

(u) 2 Hawk P O, c 18, s 20.

(v) Vagrancy Act, 1825 (5 Geo 4, c 83), s 6

(w) *Ibid*

(a) *Ibid*, s 10 An offender who has been ordered to be confined in Parkhurst prison, and who breaks prison, is, if he is under sentence of imprisonment, to receive an addition of not more than two years to his term, if he is under a sentence of penal servitude, he is to be treated in the same way as other offenders who escape from penal servitude (see Transportation Act, 1824 (5 Geo. 4, c 84), s 22), if such an offender is convicted of a recent escape, he is to be adjudged guilty of felony. An attempt to break prison is punishable by an addition of not more than twelve months' imprisonment to the sentence which the offender is undergoing (Parkhurst Prison Act, 1838 (1 & 2 Vict c 82), s 12.) As to escape from Pentonville Prison, see Pentonville Prison Act 1842 (5 & 6 Vict c 29), s. 24

(b) See p. 507, *ante*, and p. 511, *post*

(c) If force is used, the offence is breach of prison; see p. 507, *ante*

(d) 2 Hawk P O, c 17, s 5 If the escaping prisoner was in custody on a criminal charge hard labour may be added (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29) This offence is triable at quarter sessions.

nature that the prisoner would have been justified in escaping, the officer is equally justified in releasing him (e)

An escape of which an officer is guilty may be either voluntary or negligent. An officer who is guilty of a voluntary escape is punishable in the same way as the escaped prisoner who was in custody (f), and forfeits his office (g)

If a person under detention for felony is guilty of the felony for which he is detained, the officer voluntarily permitting him to go is an accessory after the fact to that offence (h).

An officer who negligently allows his prisoner to escape is liable to be fined (i). A head gaoler may be fined, when an escape has taken place by the negligence or even by the voluntary action of his subordinate (k). If a prisoner escapes from gaol or from an officer, the presumption is that the gaoler or officer was negligent, as he should have seen that the gaol was secure, or have taken a sufficient force to convey the person arrested to prison, but it is open to him to rebut this presumption (l).

A gaoler or other officer is entitled to recapture a prisoner who has escaped by his negligence, and if he does so upon fresh pursuit and without losing sight of him, the officer cannot be convicted of an escape, as the law will assume that the prisoner still remained in his custody (m).

**1013** A private person who has lawfully arrested another (n) is not only entitled, but bound, to hand him over to a person who by law ought to have the custody of him. If instead of doing so he either voluntarily or negligently permits the person so arrested to escape, he is liable to the same extent and punishable in the same way as an officer. The liability of the private person ceases upon the delivery of the prisoner to a proper officer (o).

It is a common law misdemeanour to aid a person to escape from lawful custody on civil process (p).

(e) 2 Hawk P. C., c. 19, ss. 2, 3.

(f) 1 Hale, P. C. 593, 2 Hawk P. C., c. 19, ss. 22, 25. This offence is triable at quarter sessions, except where the felony of which the prisoner is guilty could not be tried there.

(g) 2 Hawk P. C., c. 19, s. 30.

(h) *R. v. Burrage* (1735), 3 P. Wms. 439, 485.

(i) 1 Hale, P. C. 603, 2 Hawk P. C., c. 19, s. 31. The fine at common law was £100, if the prisoner escaping was an attainted felon, £5 if he had been indicted but not attainted, and discretionary in other cases (2 Hawk P. C., c. 19, s. 38).

(k) 2 Hawk P. C., c. 19, ss. 27, 29, *Woodgate v. Knatchbull* (1787), 2 Term Rep. 148, 156.

(l) 1 Hale, P. C. 601, 2 Hawk P. C., c. 19, ss. 15, 16.

(m) 1 Hale, P. C. 602, 2 Hawk P. C., c. 19, ss. 6, 13. As to recapture by an officer who voluntarily allows a prisoner to escape, see 2 Hawk P. C., c. 19, s. 12.

(n) As to the circumstances under which a private person may lawfully arrest, see p. 296.

(o) 1 Hale, P. C. 595, 2 Hawk P. C., c. 20.

(p) *R. v. Allen* (1841), Car & M. 295, where the prisoner aided had been arrested under a *ca. sa.* and continued in prison under an order of the Court for the Relief of Insolvent Debtors, see also 2 Co. Inst. 689. As to escapes suffered by officers, see 2 Hawk P. C., c. 19, as to escapes suffered by private persons, see *ibid.*, c. 20.

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relating to  
Arrest,  
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Negligence.

Recapture.

By private  
person.

Aiding a  
prisoner to  
escape from  
custody on  
civil process.

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relating to  
Arrest,  
Prosecution  
etc

The punishment for this offence is fine and imprisonment(*g*).

Aiding  
prisoner in  
custody to  
attempt to  
escape

**1014.** A person is by statute (*r*) guilty of felony who aids any prisoner to attempt to make his escape from any gaol, or from the custody of any constable or other officer or person who then has lawful charge of him in order to take him to gaol under a warrant of commitment for treason or felony.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*s*)

Aiding  
prisoner  
in escaping

**1015** Any person is by statute (*t*) guilty of felony who aids any prisoner in escaping or attempting to escape from any prison, or who, with intent to facilitate the escape of a prisoner, conveys or causes to be conveyed into a prison any mask, dress, or other disguise or any letter, article, or thing (*a*)

The punishment for such offence is imprisonment with or without hard labour for not more than two years (*b*).

Aiding  
prisoner of  
war to  
escape

**1016** Everyone is by statute (*u*) guilty of a felony who aids a prisoner of war to escape

The punishment for the offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*)

Permitting  
criminal  
lunatic to  
escape.

**1017** Any officer or servant in an asylum for criminal lunatics is guilty of felony (*e*) who, through wilful neglect or connivance, permits a person confined therein to escape

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

(*g*) The offence is triable at quarter sessions

(*r*) Prison (Escape) Act, 1742 (16 Geo 2, c 31), s 3 By s 4 a prosecution must be commenced within one year of the commission of the offence The Act only applies to a case where an attempt to escape has been made and there has been no actual escape, the Act does not apply if there has been an actual escape (*R v Tilley* (1795), 2 Leach, 662) It is also a felony under this Act to convey into a gaol any disguise or arms for the purpose of facilitating the escape of prisoners (*ibid*, s 2)

(*s*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is triable at quarter sessions

(*t*) Prison Act, 1865 (28 & 29 Vict c 126), ss 3, 4, 37 The Act does not apply to prisons for convicts under the superintendence of the Director of Convict Prisons or to military or naval prisons (s 3) As to convict prisons, see p. 508, *ante*, and as to military and naval prisons, see Army Act, 1881 (44 & 45 Vict. c 58), ss 20, 22, and Naval Discipline Act (29 & 30 Vict. c 109), s. 82

(*a*) *E.g.*, a crowbar (*R v Payne* (1866), L R 1 C C R 27)

(*b*) Prison Act, 1865 (28 & 29 Vict c 126), s 37

(*c*) Prisoners of War (Escape) Act, 1812 (52 Geo 3, c 156), s 1

(*d*) *Ibid*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 The offence is not triable at quarter sessions

(*e*) Criminal Lunatic Asylums Act, 1860 (23 & 24 Vict. c 75), s. 12

(*f*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1 If he

(iii) *Rescue.*

**1018.** Rescue, or rescous, is the offence of a person who forcibly frees another from a lawful arrest, whether such arrest be by a constable or a private person, or whether the person rescued is in prison or not. It differs in its nature and incidents from breach of prison in that the latter is committed by the prisoner himself and a rescue is by another person.

By the common law if the person rescued is guilty of high treason, and to the knowledge of the rescuer was committed for that crime, the latter is guilty of high treason (*g*). If the offence for which the person rescued is in custody is a felony or a misdemeanour, the rescuer is guilty of a felony or a misdemeanour respectively (*h*).

If the person rescued is in the custody of a private person, the rescuer is only guilty, if he knew that the person rescued was in custody for a criminal offence, but if he is in the custody of an officer or constable, it is otherwise, as he then rescues at his peril (*i*).

If the person arrested is entitled to free himself from an unlawful or irregular arrest, a person rescuing him is not guilty of any offence (*k*).

The person rescued must be tried for his offence before the rescuer is tried for the rescue, if the former is acquitted, the rescuer cannot under any circumstances be convicted of felony, but he may be fined and imprisoned for a misdemeanour (*l*). If the person rescued is convicted of felony, and the offence of the rescuer is therefore felony, the rescuer is liable to penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*m*). If the rescue is committed under such circumstances as to amount to misdemeanour only, the punishment is fine and imprisonment with or without hard labour (*n*).

**1019.** Everyone is by statute (*o*) guilty of a felony who rescues or attempts to rescue any person committed for or convicted of

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Offences  
relating to  
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etc.  
—  
Rescue.

In murder  
cases

carelessly allows such a person to escape, he is liable on summary conviction to a fine of £20 (*abd*). The offence is triable at quarter sessions. A penalty of £20 is imposed on an officer of a non-criminal lunatic asylum for assisting or conniving at the escape of a patient therefrom (Lunacy Act, 1890 (*od* Vict. c. 5), s. 323). As to escape from retreats and reformatories for inebriates, see *Habitual Drunkards Act, 1879* (42 & 43 Vict. c. 19), s. 26, *Inebriates Act, 1898* (61 & 62 Vict. c. 60), ss. 11, 18, and the regulations made under these Acts.

(*g*) 2 Hawk P. C., c. 21, s. 7. But it was decided in one case that knowledge that the person rescued was confined for treason is not essential (*R. v. Bensted* (1640), Cro. Cal. 583).

(*h*) 1 Hale, P. C. 606, 2 Hawk P. C., c. 21, s. 1, *R. v. Bensted, supra*, *R. v. Messenger* (1668), Kel. 70, 77. The offence is only triable at quarter sessions, if the felony or misdemeanour for which the person rescued is in custody is triable there.

(*i*) 1 Hale, P. C. 606, 2 Chitty, Criminal Law, 183, n.

(*k*) 2 Hawk P. C., c. 21, s. 2, see, however, *R. v. Almey* (1857), 3 Jur. (N. S.) 750.

(*l*) 1 Hale, P. C. 598, 599.

(*m*) Rescue Act, 1821 (1 & 2 Geo. 4, c. 88), s. 1, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*n*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.

(*o*) Murder Act, 1751 (25 Geo. 2, c. 37), s. 9.

**SECT 5**  
**Offences**  
**relating to**  
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**Prosecution**  
**etc**

**Convict at**  
**large.**

**murder** The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*p*).

(iv) *Convict at Large*

**1020** Any offender sentenced to penal servitude or banishment is by statute (*q*) guilty of felony who is afterwards at large within any part of the King's dominions without some lawful excuse before the expiration of the term for which he was sentenced to penal servitude or banishment

The punishment for this offence is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (*r*)

Every person rescuing or attempting to rescue such offender from the custody of any gaoler or other person conveying him, or who conveys or causes to be conveyed to him any disguise, instrument for effecting escape, or arms, is punishable as if the offender had been in prison (*s*).

(v) *Pound-breach*

**Pound-**  
**breach.**

**1021** Goods impounded upon a distress (*t*) either for rent or damage feasant are in the custody of the law, and every person who takes them from the pound against the will of the person impounding them is guilty of the common law misdemeanour known as pound-breach (*u*). The punishment is fine and imprisonment without hard labour (*a*)

**Straying**  
**animals.**

**1022.** If animals straying are being taken to the pound by a public officer and they are rescued, the rescuer is guilty of a common law misdemeanour, although the cattle have not yet reached the pound, but it is otherwise if they are rescued while being distrained by a private person and before the impounding (*b*)

(*p*) Murder Act, 1751 (25 Geo 2, c 37), s 9, Punishment of Offences Act, 1837 (7 Will 4 & 1 Vict c 91) s 1, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions

(*q*) Transportation Act, 1824 (5 Geo 4, c 84), s 22, Transportation Act, 1834 (4 & 5 Will 4, c 67), Penal Servitude Act, 1857 (20 & 21 Vict c 3), ss 2, 3 The Act will probably not apply to aliens deported under the Aliens Act, 1905 (5 Edw 7, c 13), a special punishment being provided for such aliens in case of their return to this country (*vide*, ss 3 (2), 7) See title ALIENS, Vol I, p 323

(*r*) Transportation Act, 1824 (5 Geo 4, c 84), s 22 The offence is not triable at quarter sessions

(*s*) *Ibid*

(*t*) As to what amounts to an impounding, see title DISTRESS

(*u*) Co Litt 47 b, 2 Chitty, Criminal Law, 201—207, 2 Hawk P C, c 10, s. 56; and see the preamble to the Pound-breach Act, 1843 (6 & 7 Vict c 30) *Quere* whether an indictment lies in such a case, if a man retakes without force his own goods which have been unlawfully seized (*R v Walsh* (1876), 10 L R C L 511, and see *R v Knight* (1908), 1 Cr App Rep 186); in other cases the mere act of taking goods out of the custody of the law is, it seems, indictable, whether force is or is not used (*R v Butterfield* (1892), 17 Cox, C C 898, *R v Nicholson* (1901), 65 J P 298) The Pound-breach Act, 1843 (6 & 7 Vict c 30), provides a punishment which can be awarded on summary conviction.

(*a*) The offence is triable at quarter sessions.

(*b*) *R v Bradshaw* (1835), 7 C. & P. 233; and see title ANIMALS, Vol I, p 385.

**1023.** Rescuing goods lawfully distrained for rates is a common law misdemeanour (c), upon the general principle that it is a criminal act to rescue goods which are in the legal custody of officers of the law, although there may be no breach of the peace, and although the goods may have been stored in an improper place (d).

SECT 5  
Offences  
relating to  
Arrest,  
Prosecution  
etc.

SECT. 6.—*Offences affecting the Property and Prerogative of the Crown*

SUB-SECT 1.—*Misapplication of Marks of Public Departments.*

**1024.** Certain marks have been exclusively appropriated by statute to denote His Majesty's property in public stores (e). A person is guilty of a misdemeanour (f) who without lawful authority applies any of these marks to stores. The punishment for this offence is imprisonment with or without hard labour for not more than two years (g).

Misapplica-  
tion of  
Government  
marks.

**1025** Everyone is guilty of a felony (h) who takes out, destroys, or obliterates, wholly or in part, any such mark or any mark whatsoever denoting the property of His Majesty in any stores with intent to conceal the King's property in them. The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (i).

Obliteration  
of marks.

(c) *R v Brenan* (1854), 6 Cox, C C 381, *R v Higgins* (1851), 2 I O L R. 213, and see title DISTRESS. These offences are triable at quarter sessions.

(d) See *R v Beauhamp* (1827), 5 L J (O S) (M C) 66. The rescue of goods seized by the sheriff under an execution is a misdemeanour of a similar kind. As to resistance to sheriff, see Sheriffs Act, 1887 (50 & 51 Vict c 55), s 8 (2).

(e) For the marks appropriated for use generally upon stores under the control of the Admiralty or any public department or office, or of any person in the King's service, see Public Stores Act, 1875 (38 & 39 Vict c 25), Sched I. For the marks applied to the stores used for the purposes of Greenwich Hospital, see Greenwich Hospital Act, 1865 (28 & 29 Vict c 89), s 45, Public Stores Act, 1875 (38 & 39 Vict c 25), s. 17.

(f) Public Stores Act, 1875 (38 & 39 Vict c 25), s. 4.

(g) *Ibid*. The offence is triable at quarter sessions.

(h) *Ibid*, s. 5. As to obliterating the marks on regimental necessaries, see s. 13, and Army Act, 1881 (44 & 45 Vict. c 56), s. 156. The Public Stores Act, 1875 (38 & 39 Vict c 25), by s. 12 incorporates the following sections of the Larceny Act, 1861 (24 & 25 Vict c 96)—Ss 98, 99 (punishment of accessories), s. 100 (restitution of goods upon conviction), s. 103 (apprehension without warrant; search warrant, seizure of person offering for sale or in pawn), ss. 107—112, 120 (as to summary convictions), s. 113 (repealed), s. 115 (offences within jurisdiction of Admiralty), s. 116 (form of indictment for a subsequent offence and proof of previous conviction), s. 117 (power of court in case of misdemeanour in addition to or substitution for other punishment to impose fine and require sureties), s. 118 (repealed), s. 119 (as to solitary confinement, repealed, and whipping, inapplicable), s. 120 (summary proceedings), s. 121 (costs, repealed).

(i) Public Stores Act, 1875 (38 & 39 Vict c 25), s. 5; Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s. 1. It is a misdemeanour to have possession of any of His Majesty's stores reasonably suspected of being stolen or unlawfully obtained and not to give to the court a satisfactory account of the manner in which they were come by. The punishment is a fine or two months' imprisonment (Public Stores Act, 1875 (38 & 39 Vict. c 25), s. 7). This offence

## SECT. 6.

Offences  
affecting  
Property  
etc. of the  
Crown

Making  
counterfeit  
coin, gold  
or silver.

SUB-SECT 2—*Coinage Offences (k)*

**1026.** Every person is by statute (l) guilty of a felony (1) who falsely makes or counterfeits any coin resembling, or apparently intended to resemble or pass for, the King's current gold or silver coin (m), or (2) who gilds or silvers or with any wash or materials capable of producing the appearance of gold or of silver or by any means whatsoever washes over or colours any coin whatsoever resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, or (3) gilds or silvers etc any piece of silver or copper or of coarse gold or coarse silver or of any metal or mixture of metals, being of a fit size and figure to be coined and with intent that it shall be coined into counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, or (4) gilds or with any wash or materials capable of producing the colour or appearance of gold or by any means whatsoever washes, cases over, or colours any of the King's current silver coin, or files or in any manner alters such coin with intent to make it resemble or pass for any of the King's current gold coin, or (5) gilds or silvers etc any of the King's current copper coin with intent to make it resemble or pass for any of the King's current gold or silver coin (n)

The punishment for any such offence is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (o)

Counterfeit  
coin.

**1027** A coin which has been made or altered so as to be other than it ought to be, or made to resemble that which it is not, is a counterfeit coin (p) It is a question of fact for the jury whether

may be punished on summary conviction, but the offender may be indicted, provided he is not punished twice for the same offence (*ibid*) The offence is triable at quarter sessions

(k) See title CONSTITUTIONAL LAW, Vol VI, p 461

(l) Coinage Offences Act, 1861 (24 & 25 Vict c 99), ss 2, 3 To counterfeit the King's coin and to import false money from abroad resembling English money was treason by 25 Edw 3, stat 5, c 2, but this enactment, so far as counterfeiting was concerned, was only declaratory of the pre-existing law (Bract, bk 3, ff 118 b, 119 b) Various enactments followed which were amended and consolidated by stat (1832) 2 & 3 Will 4, c 31, which repealed that part of 25 Edw 3, stat 5, c 2, which related to false money, coining thus ceasing to be treason The law on the subject is now to be found entirely in the Coinage Offences Act, 1861 (24 & 25 Vict c 99) In that Act "the King's current gold or silver coin" and "the King's copper coin" include respectively any gold or silver or copper (or bronze) coin coined in any of His Majesty's mints, or lawfully current by proclamation or otherwise in any part of the King's dominions, and "the King's current coin" has a similar meaning (s 1) False or counterfeit coin "resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin" includes any of the current coin which has been gilt, silvered, washed, coloured, or cased over or in any manner altered to resemble or pass for any of the King's current coin of a higher denomination see *R v Hermann* (1879), 4 Q B D 284, C C R.

(m) Coinage Offences Act, 1861, *supra*, s 2.

(n) *Ibid.*, s. 3

(o) *Ibid.*, ss. 2, 3 The offence is not triable at quarter sessions

(p) *R v. Hermann*, *supra*, at p 288, C. C. R., where a genuine sovereign which had been fraudulently filed at the edges so as to reduce the weight by one twenty-fourth, a new milling having then been added, was held to be a



the counterfeit so nearly resembles any current coin as to be intended to resemble or pass for it (*q*)

The offence of counterfeiting consists in the making or altering of the coin, it is not necessary that there should have been any attempt to utter it (*a*) Any credible witness may prove that the coin in question is counterfeit (*b*)

Sec. 4.  
Offences  
affecting  
Property  
etc. of the  
Crown.

**1028** It is by statute (*c*) a felony to impair, diminish, or lighten any of the King's current gold or silver coin with intent that the coin so impaired etc. may pass as current coin The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Lightening  
etc. the  
King's gold  
or silver coin

**1029** Everyone is by statute (*e*) guilty of felony who unlawfully has in his custody or possession (*f*) any filings, clipping, or gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which has been produced or obtained by impairing, diminishing or lightening the King's current gold or silver coin knowing it to have been so produced or obtained The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*)

Unlawful  
possession of  
filings etc. of  
gold etc.

**1030** Everyone is by statute (*h*) guilty of felony who without lawful authority or excuse (*i*) buys, receives, pays, or puts off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin at a lower rate or value than the same imports or was apparently intended to import (*j*) In an indictment for this offence it is enough to allege that the accused did buy etc. the false or counterfeit coin

Buying etc.  
counterfeit  
gold or silver  
coin

false and counterfeit coin With regard to colouring coins to resemble genuine coins or coins of a higher denomination see *R v Lane* (1776), 1 Leach, 153, *R v Case* (1795), 1 Leach, 151, n., *R v Turner* (1855), 2 Mood C. C. 42 (gilding sixpences), all decided on an earlier but similar statute

(*g*) *R v Wilson* (1785), 1 Leach, 285, *R v Welsh* (1785) *ibid* 304, 1 East, P. C. 164, where the prisoners were held to have been rightly convicted of making pieces of metal apparently resembling a shilling in size and colour, but bearing no impression whatever, and see *R v Byrne* (1852), 6 Cox, C. C. 475, *R v Robinson* (1865), 10 Cox, C. C. 107, C. C. R.

(*a*) 1 Hale, P. C. 228, nor, apparently, an intention at any time to utter it.

(*b*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 20

(*c*) *Ibid*, s. 4

(*d*) *Ibid* The offence is triable at quarter sessions

(*e*) *Ibid*, s. 5

(*f*) A person has any matter mentioned in the Act in his custody or possession not only if he has it in his personal custody or possession, but also if he knowingly and wilfully has it in the actual custody or possession of any other person, and also knowingly and wilfully has it in any dwelling-house or other building, lodging, apartment, field, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person (*ibid* s. 1). See *R v Skerret* (1826), 2 O & P. 427, *R v Gerrish* (1839), 2 Mood & R. 219; *R v Owen* (1889), 53 J. P. 822, *R v Weeks* (1861), Le & Ca. 18

(*g*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 5 The offence is triable at quarter sessions

(*h*) *Ibid*, s. 6

(*i*) The proof of the authority or excuse lies on the party accused (*ibid*).

(*j*) *Ibid*

**SMOKE &  
Offences  
affecting  
Property  
etc of the  
Crown.**

To prove that the defendant knew that the coin uttered was false or counterfeit, and to negative accident or mistake, evidence may be given that other counterfeit money was found in his possession, or that either before or after the uttering in question he uttered other base money, whether of the same denomination or not, provided that in the opinion of the judge these utterings were not so remote in point of time as to be wholly disconnected with each other (n).

**Making  
counterfeit  
copper coin**

**1039** A person is by statute (o) guilty of a felony who (1) falsely makes or counterfeits any coin resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, or (2) buys, sells, receives etc any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's copper coin at a lower rate than the same imports or was apparently intended to import

The punishment is penal servitude for not more than seven years nor less than three years, or imprisonment with or without hard labour for not more than two years (p)

**Uttering  
counterfeit  
copper coin.**

**1040** A person is by statute (q) guilty of a misdemeanour who (1) tenders, utters, or puts off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, the King's current copper coin knowing it to be false or counterfeit, or (2) has in his custody or possession three or more pieces of such counterfeit copper coin knowing the same to be false or counterfeit and with intent to utter the same or any of them

The punishment is imprisonment for not more than one year with or without hard labour (r)

**Defacing the  
King's coin.**

**1041** Everyone is by statute (s) guilty of a misdemeanour who defaces any of the King's current gold, silver, or copper coin by stamping any names or words thereon, whether such coin is or is not thereby diminished or lightened

The punishment is imprisonment for not more than one year with or without hard labour (t)

No tender of payment in money made in any gold, silver, or copper coin so defaced by stamping as above mentioned is to be allowed to be a legal tender (u)

**Making  
counterfeit  
foreign gold  
or silver coin.**

**1042** It is by statute a felony (x) to make or counterfeit any kind of coin not being the King's current gold or silver coin, but

(n) *R v Whaley (or Wylie)* (1804) 2 Leach, 983 *R v Ball* (1808), 1 Camp 325, *R v Forster* (1855), Dears C C 456, *R v Colclough* (1882), 15 Cox, C C 92 (C C R (Ir)), *R v Fuller* (1816), Russ & Ry 308, *R v Ollis*, [1900] 2 Q B 758, 781, 782, C C R.

(o) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 14

(p) *Ibid.*, s 15

(q) *Ibid.*, s 15 As to custody or possession, see note (f) on p 515, *ante*

(r) *Ibid.* The offence is triable at quarter sessions

(s) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s 16

(t) *Ibid.*

(u) *Ibid.* s 17 A person who tenders, utters, or puts off a coin so defaced is liable on conviction before justices to a penalty of 40s, but no person can proceed for the penalty without the consent of the Attorney-General (*ibid.*)

(x) Coinage Offences Act, 1861 (24 & 25 Vict c. 99), s. 18, *R v Roberts* (1855), Dears C C 539.

resembling, or apparently intended to resemble or pass for, any gold or silver coin of any foreign prince, State, or country.

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (y).

**1043** It is by statute (z) a felony knowingly to bring any such counterfeit gold or silver foreign coin into the United Kingdom

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (a)

**1044** It is by statute (b) a misdemeanour to utter any such coin knowing it to be counterfeit

The punishment is imprisonment for not more than six months with or without hard labour, and for a second offence imprisonment for not more than two years with or without hard labour (c)

Everyone is by statute (d) guilty of a felony who utters such coin after two previous convictions.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (e)

**1045** Everyone is by statute (f) guilty of a misdemeanour who makes falsely or counterfeits any kind of coin intended to resemble or pass for any copper coin or any other coin made of any metal or mixed metals of less value than the silver coin of any foreign State.

The punishment for the first offence is imprisonment for one year with or without hard labour, and for the second offence penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not less than two years (g)

**1046** Everyone is by statute (h) guilty of a felony who knowingly and without lawful authority or excuse, makes, mends, begins or

SECT. 6.  
Offences affecting  
Property  
etc. of the  
Crown.

Importing  
counterfeit  
foreign gold  
or silver coin

Uttering  
counterfeit  
foreign gold  
or silver coin.

Making  
counterfeit  
foreign  
copper coin.

Making etc.  
or having  
possession of  
instruments  
for counter-  
feiting gold  
or silver coin.

(y) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 18, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is triable at quarter sessions

(z) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 19

(a) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 19, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is triable at quarter sessions

(b) Coinage Offences Act, 1861 (24 & 25 Vict c 99), ss 20, 21

(c) *Ibid* The offence is triable at quarter sessions

(d) *Ibid*, s 21

(e) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions

(f) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 22

(g) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is triable at quarter sessions A person who without lawful authority or excuse has in his possession more than five pieces of counterfeit foreign coin forfeits the same on summary conviction, and also forfeits £2 for every such piece of counterfeit coin. Half of this penalty is payable to the informer and the other half to the poor of the parish (Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 23)

(h) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 24 A galvanic battery is a "machine" within the meaning of this section (*R v Gover* (1863) 9 Cox, C. C. 282) If a person employs a die-sinker to make for a pretended innocent purpose a die fitted to make shillings and the die-sinker acts innocently and with the knowledge of the authorities of the Mint, the employer may be convicted of making the die (*R. v. Bannen* (1844), 2 Mood C. C. 309). An

**SECT. 6**  
**Offences**  
**affecting**  
**Property**  
**etc of the**  
**Crown.**

proceeds to make or mend, buys, sells, or has in his custody or possession (i) (1) any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, made or impressed with, or which will make or impress, the figure or apparent resemblance of both or either of the sides of any of the King's current gold or silver coin, or of the coin of any foreign State or any part or parts of both or either of such sides, or (2) any edges, edging or other tool, collar, instrument, or engine adapted and intended for marking or milling the edges of any such coin knowing it to be so adapted and intended, or (3) any press for coinage or engine for cutting round blanks out of gold, silver, or other metal, or any other machine, knowing it to have been used or intended to be used for the false making of any such coin.

The punishment for any such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (j)

**Making etc.**  
**instruments**  
**for counter-**  
**feiting copper**  
**coin.**

**1047** Every person is by statute (k) guilty of felony who knowingly without lawful excuse, makes, mends, or has in his custody or possession any instrument, tool, or engine adapted and intended for counterfeiting any of the King's current copper coin

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (l)

**Conveying**  
**coining tools**  
**out of the**  
**mint.**

**1048** Everyone is by statute (m) guilty of felony who without lawful authority or excuse knowingly conveys out of any of His Majesty's mints any puncheon, counter puncheon, matrix, stamp, die, pattern, or other tool, instrument, press, or engine used in the coining of coin, or any useful part thereof, or any coin, bullion, or metal or mixture of metals

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (n)

indictment under this section (and also for offences against other sections where the words "without lawful authority or excuse" are used) must allege that the act was done without such lawful authority or excuse although in each of these sections the onus of proving the lawful authority or excuse is thrown upon the prisoner (*R v Harvey* (1871). L R 1 Q Q R 284) The intent with which the accused bought or sold or had in his possession the particular instrument of coining is immaterial, if he knew that it was one which was adapted and intended to be used for making counterfeit coin (*ibid*, *R v Bell* (1753), 1 East, P. C 169, and see *Dickins v Gull*, [1896] 2 Q B 310)

(i) As to possession, see note (f) on p 515, *ante*.

(j) Coinage Offences Act, 1861 (24 & 25 Vict c. 99), s. 24 This offence is not triable at quarter sessions.

(k) *Ibid.*, s. 14

(l) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c. 69), s. 1 This offence is triable at quarter sessions

(m) Coinage Offences Act, 1861 (24 & 25 Vict c. 99), s. 25. This offence is not triable at quarter sessions

(n) *Ibid*. The following provisions of the Coinage Offences Act, 1861, relate to the discovery of counterfeit coin and coining tools and the destruction of counterfeit or diminished coin. If anyone finds in any place or in the custody of any person having the same without lawful authority or excuse any false or counterfeit coin, whether English or foreign, or any instrument for making the

**1049.** Every offence of falsely making or counterfeiting any coin or of buying, selling, receiving, paying, tendering, uttering or putting off or of offering to buy, sell, receive, pay, utter or put off any false or counterfeit coin against the provisions of the Act is to be deemed to be complete, although the coin so made etc is not in a fit state to be uttered or the counterfeiting is not finished (o).

SECT. 4.  
Offences  
affecting  
Property  
etc. of the  
Crown.

SUB-SECT 3.—*Concealing Treasure Trove*

**1050** Treasure trove is gold or silver, in coin, plate, or bullion, whereof no person can now prove the property, hidden in ancient time and discovered recently, it belongs to the King or to some lord or other person by the King's grant or prescription (p), the *prima facie* presumption always being that it belongs to the King (q)

Treasure  
trove.

Every person is guilty of a common law misdemeanour (r) who finds treasure trove and conceals it

Concealing  
treasure  
trove

The punishment is a fine and imprisonment without hard labour (s).

It is a part of the duty of the coroner to hold an inquisition to inquire who were the finders of treasure trove and who is suspected of concealing it (t), but the holding of such an inquisition is not necessary before indicting a person for concealment of the treasure (u)

Coroner's  
inquisition in  
cases of  
treasure  
trove.

The offence consists in intentional concealment, it is not

same, or any gold or silver, whether in dust, solution, or otherwise obtained by diminishing the King's current gold or silver coin, it is lawful for him, and he is required, to seize it and take it before a justice of the peace, a justice of the peace may also issue a search warrant for the discovery of false and counterfeit coin and instruments of coining (*ibid*, s 27, see also s 31, which provides for the apprehension by any person of offenders found committing any indictable offence against the Act) Where any coin is tendered as the King's current gold or silver coin to any person who suspects it to be diminished otherwise than by reasonable wearing, or to be counterfeit, he may cut, break, bond, or deface such coin. If it appears to be diminished or counterfeit, the person tendering it must bear the loss. If it is of due weight and appears to be lawful coin, the person defacing it must receive it as such. In case of dispute as to whether the coin is diminished or counterfeit this question is to be determined in a summary way by a justice of the peace. Tellers at the Exchequer and the receivers general of every branch of the Revenue are required to break or deface every piece of counterfeit or unlawfully diminished gold or silver coin tendered to them in payment (*ibid*, s. 26) As to apprehension of offenders, see p 300, note (d), *ante*, and as to accessories, see p 253, *ante*

(o) Coinage Offences Act, 1861 (24 & 25 Vict c 99), s 30. See further, as to venue, *ibid*, s 28, and pp 256, 258, 284, 286, *ante*, as to offences committed within the jurisdiction of the Admiralty, *ibid*, s 36; proof of previous convictions, *ibid*, s 37, fining offenders and binding them to keep the peace, *ibid*, s 38

(p) 3 Co. Inst. 132, *Termes de la Ley*, 565, Chitty, *Prerogative of the Crown*, 152, and title CONSTITUTIONAL LAW, Vol. VII, p. 212

(q) *A.-G v Moore*, [1893] 1 Ch. 676, 683

(r) 3 Co. Inst. 132.

(s) The offence is, it seems, an offence against the prerogative of the King and therefore not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(t) Coroners Act, 1887 (50 & 51 Vict. c. 71), s 36, repealing stat. de Coronatoris, 4 Edw 1, stat. 2, s. 1; see title CORONERS, Vol. VIII, p. 247.

(u) *R. v. Toole* (1867), 11 Cox, C. C. 75, C. C. R. (Ir).

**SECT 6**  
**Offences**  
**affecting**  
**Property**  
**etc of the**  
**Crown.**

**Smuggling**

**Making**  
**signals to**  
**smuggling**  
**vessels.**

**Shooting at**  
**ship etc**  
**engaged in**  
**the pre**  
**vention of**  
**smuggling.**

**Procuring**  
**persons to**  
**assemble for**  
**smuggling**

necessary to allege in the indictment that the defendant acted fraudulently, although the word "fraudulent" is commonly used in some old authorities (v)

#### SUB-SECT 4—*Smuggling*

**1051** Smuggling consists in bringing on shore, or in carrying from the shore, dutiable goods, wares, or merchandise for which duty has not been paid, or goods the importation of which is prohibited (x)

**1052** Every person is by statute (a) guilty of a misdemeanour who after sunset and before sunrise between the 21st September and the 1st April, or after 8 p m and before 6 a m at any other time of the year, makes or assists in making any signal from ship, boat, or shore for the purpose of giving notice to any person on board any smuggling ship or boat

The punishment is the forfeiture of £100 or imprisonment for one year with or without hard labour (b)

**1053** Every person is by statute (c) guilty of a felony who maliciously shoots at any vessel or boat belonging to His Majesty's navy or in the service of the revenue, or maliciously shoots at, maims, or wounds any officer of the army or navy, or any mariner or coast-guard employed in the prevention of smuggling and on full pay, or any officer of customs or excise, or any person acting in his aid, in the execution of his duty

The punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (d)

**1054** A person is by statute (e) guilty of a misdemeanour who procures any person or persons to assemble for landing, carrying or

(v) *R v Thomas* (1863), *L & Ca* 313

(a) 1 Hawk P O, c 30, s 1 The penalty for smuggling is that the goods smuggled (Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 177), and the ship, boat, carriage, or horse used for their conveyance (*ibid*, s 202), are forfeited to the Crown, and the offender is also liable to forfeit either treble the value of the goods, including the duty thereon, or £100, at the election of the Commissioners of Customs (*ibid*, s 156) The forfeitures are recoverable by action, *ibid*, s 218

(a) Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 190, see also ss 191, 192

(b) *Ibid*

(c) *Ibid*, s 193, see also Customs and Inland Revenue Act, 1881 (44 Vict c 12), s 12, which imposes a penalty of £100 for rescuing any person apprehended for any offence against the Customs Act, 1876, which is punishable by fine or imprisonment, or for preventing the apprehension of such a person, or for assaulting or obstructing any officer of customs while acting in the execution of his duty The penalty is, it seems, recoverable by action

(d) Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 193; Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 Under the Customs Consolidation Act, 1876, a sentence of imprisonment for three years without hard labour could be given *Quære* whether a sentence of three years' imprisonment could now be inflicted for this offence (Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1) *Quære* also whether this or the last-mentioned offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s. 1).

(e) Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 189, see *ibid*, s. 188, which is repealed by the Customs and Inland Revenue Act, 1879 (42 & 43

concealing any goods which are prohibited from being imported, or the duties for which have not been paid or secured

The punishment is imprisonment with or without hard labour for twelve months, if any person engaged in landing etc. such goods is armed with firearms or other offensive weapons, or whether so armed or not is disguised in any way, or, being so armed or disguised, is found with any goods liable to forfeiture under the Customs Acts within five miles of the sea coast or of a tidal river, he is liable to imprisonment with or without hard labour for not more than three years (f)

Large clubs or sticks are "offensive weapons." The expression includes anything that is not in common use for any other purpose but a weapon, but a common whip is not such a weapon, nor, probably, is a hatchet which is caught up accidentally during the heat of an affray (g).

**1055** All indictments and informations for any offence against the Customs Acts in any court or before any justice must be brought or exhibited within three years next after the date of the offence committed (h)

SECT 6.  
Offences affecting  
Property  
etc of the  
Crown.

Limitation of  
time for  
prosecution.

#### SECT 7—Offences relating to Elections

**1056** There are various criminal offences in relation to bribery Elections.  
at elections, undue influence, evasion of the Ballot Act, personation, and neglect or delay in the issue of writs for elections, these offences are treated of in another part of this work (i)

#### SECT 8—Offences on the High Seas.

##### SUB-SICI 1—Piracy

**1057** Piracy *jure gentium* (j) consists in destroying, attacking, or taking a ship, or taking any part of its tackle or cargo, from the owners on the high seas, or within the jurisdiction of the Admiralty, by acts of violence or by putting in fear, and by a body of men acting without the authorisation of any State or politically organised society (k)

Piracy *jure  
gentium.*

Vict c 21), s 14, and schedule but is replaced by s 10 of the last-mentioned Act, which is to the same effect (see Stephen, Digest of the Criminal Law, 6th ed., 58, n)

(f) Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 189

(g) *R v Fletcher* (1742), 1 Leach, 23, *R v Hutchinson* (1784), 1 Leach, 339, 342, n, *R v Noakes* (1832), 5 C & P 326

(h) Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 257 But probably an indictment for a conspiracy to infringe any of the provisions of the Acts could be preferred after the expiration of three years (see *R v Thompson* (1851), 16 Q B 832)

(i) See title ELECTIONS

(j) Piracy was not, properly speaking, felony at common law, and a pardon of all felonies did not include piracy (1 Hawk P O, c 20, s 12, 3 Co Inst 111, *R v Morpheus* (1696), 1 Salk 85) It was, however, known as felony by civil law, and was tried according to that law by the admiral or his deputy prior to the Offences at Sea Act, 1836 (28 Hen 8, c 15), see the preamble to that statute, Molloy, De Jure Maritimo, bk 1, c 4, s 24, Co Litt 391 a

(k) In *A-G for Hong Kong v Kuok-a-Sing* (1873), L R 5 P C 179, 199, the Privy Council approved as a correct exposition of the law as to what constitutes piracy *jure gentium* the following passage from the charge to the

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 Offences  
 on the  
 High Seas.  
 —  
 Jurisdiction  
 in piracy.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (l)

**1058** The King's courts have jurisdiction to try all cases of piracy *jure gentium* in whatever part of the seas and upon whose-soever property it may be committed, and whether the accused are British subjects or the subjects of any foreign State with whom the King is at amity (m)

If the act of depredation was committed, even without the King's commission, upon a subject of a State at enmity with the King, it does not amount to piracy.

It is piracy for a man who holds the King's commission to despoil those with whom his commission does not authorise him to fight, if they are in amity with the King (n)

The place where the alleged piracy was committed must be within the jurisdiction of the Admiralty (o)

grand jury in *R v Dawson* (1696), 13 State Tr 454 — "piracy is only a sea term for robbery, piracy being a robbery within the jurisdiction of the Admiralty. If the mariner of any ship shall violently dispose of the master, and afterwards carry away the ship itself or any of the goods with a felonious intention in any place where the Lord Admiral hath jurisdiction, this is robbery and piracy." But see Stephen, *History of the Criminal Law*, Vol. II, 28. Several definitions of this offence by jurists of various nationalities are collected in Hall on *International Law*, 5th ed., p. 260 n. The words "or politically organised society" have been added to the definition in the text to meet the case of a body of persons acting in what they suppose to be the public interest of their country, for public ends, and not with a view to satisfy (at any rate directly) their own greed or desire for revenge. It is submitted that persons so acting, and committing only such acts as would be regular acts of war if done under the authority of a recognised State, would not at the present day be held guilty of piracy. There would in such a case be, properly speaking, no *animus furandi*, which has been said to be a necessary ingredient of the offence when ship or cargo is taken, and the acts of hostility would be directed against the subjects of one particular State, and not by the indiscriminating desire of plunder which characterises the *hostis humani generis*. See Hall on *International Law*, pp. 257 *et seq.*, where the matter is fully discussed, also *Re Tinnan* (1864), 5 B & S 610 (also reported as *Re Tinnan* (1864), 9 Cox, C O 522); *The Magellan Pirates* (1853), 1 Ecc & Ad 81, 83, *Bolivia Republic v Indemnity Mutual Marine Assurance Co.*, [1909] 1 K B 785. Cases of this kind arose in the United States during the Civil War, but were dealt with under special Acts of Congress (see Bishop, *Criminal Law*, Vol. II, p. 618 n).

(l) Piracy Act, 1837 (7 Will 4 & 1 Vict c 88), s 3, Penal Servitude Act, 1857 (20 & 21 Vict c 3), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1, but see p 526, *post*. No kind of piracy is triable at quarter sessions.

(m) 1 Hawk P C, c 20, s 1, *R v Dawson* (1696), 13 State Tr 451, 455. But an act which is declared piracy by statute and does not amount to piracy *jure gentium* will only be punishable in an English court, if committed by a British subject, unless it was committed within the King's dominions or within the Admiralty jurisdiction.

(n) 4 Co Inst 154, charge of Sir L Jenkins, Life of Sir L Jenkins, Vol I, p xciv; *Re Tinnan*, *supra*. As to depredations by a British subject acting under a commission from a foreign State, see p 525, *post*.

(o) 3 Co Inst 113, 1 Hawk P C, c 20, s 15, *R v Allen* (1837), 1 Mood C 494, *R v Anderson* (1868), L R 1 C C R. 161, 169, *R v Carr* (1862), 10 C B D. 76, C O R., and see p 273, *ante*, and title ADMIRALTY, Vol I, p. 59. The ordinary rule that an indictment will not lie in an English court for an offence committed at sea beyond the limits of the territorial waters (Territorial



All offences committed on the high seas and other places within the jurisdiction of the Admiralty may now be tried by justices of assize or commissioners of oyer and terminer or gaol delivery in any county where a person committed for such an offence is imprisoned (p), or by the Central Criminal Court (q)

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Offences  
on the  
High Seas

**1059** If a natural-born subject of the King or a denizen of this kingdom commits any piracy or robbery or any act of hostility against the King's subjects upon the sea under colour of any commission from any foreign prince or State, or pretence of authority from any person whatever, either during peace or war, he is by statute (r) deemed to be a pirate, felon, and robber.

Piracy under  
colour of  
commission  
from a  
foreign State.

**1060** A master or seaman is by statute (s) deemed to be a pirate, felon, and robber, punishable as a pirate, (1) who within Admiralty jurisdiction betrays his trust and turns pirate, enemy, or rebel and piratically runs away with his ship or any boat, ordnance, ammunition or goods, or yields them up voluntarily to a pirate, or (2) who brings seducing messages from any pirate, enemy, or rebel, or (3) who consults or combines with or attempts to corrupt any master, officer or mariner to yield up or run away with any ship or goods or turn pirate, or (4) who lays violent hands on his commander to hinder him from fighting in defence of his ship, or confines him, or endeavours to make a revolt in the ship.

Master or  
seaman turn-  
ing pirate etc.

**1061** A master of a ship, or any other person who trades with any pirate, or furnishes him with ammunition, provisions or stores, or who fits out a ship for so trading, or who consults, combines, or corresponds with a pirate knowing him to be such, is by statute deemed to be guilty of piracy, felony, and robbery (t)

Trading with  
pirates etc

**1062** Any person belonging to any ship is by statute (u) deemed

Forcibly  
boarding  
ship

Waters Jurisdiction Act, 1878 (41 & 42 Vict c 73), s 2) on board a foreign vessel by a foreigner (*R v Kryn* (1876), 2 Fx D 63, C C R, *R v Anderson* (1868), L R 1 C C R 161, 169) does not apply to piracy

(p) Admiralty Offences Act, 1844 (7 & 8 Vict c 2), ss 1, 3, 4, and see Offences at Sea Act, 1836 (28 Hen 8, c 15), ss 1, 2

(q) Central Criminal Court Act, 1834 (4 & 5 Will 4, c 36), s 22 As to the trial in the colonies of pirates and others who have committed crimes on the high seas, see 11 Will 3, c 7, Offences at Sea Act, 1806 (46 Geo 3, c 54), Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict c 96), Foreign Jurisdiction Act, 1890 (53 & 54 Vict c 37), and the Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 687

(r) 11 Will 3, c 7, s 7 (made perpetual by 6 Geo 1, c 19)

(s) Stat (1698) 11 Will 3, c 7, s 8 As to who are accessories, see ss 9, 10 Upon a charge of confining the master it is not necessary to show that force was actually used. A constructive confinement, as by so threatening the master as to render him not a free agent to go where he liked on board the ship, is a confinement within the meaning of the section (*R v Jones* (1870), 11 Cox, C C 393, per BOVLILL, C J, at p 397)

(t) Piracy Act, 1721 (8 Geo 1, c 24), s 1

(u) *Ibid*

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**Offences**  
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to be and is punishable as a pirate who, upon meeting a merchant ship on the high seas or in any port, haven, or creek, forcibly boards or enters her, and who, though he does not seize or carry off such vessel, throws overboard or destroys any part of the goods or merchandise belonging to her

**Punishment**

**1063** The punishment for a statutory piracy is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (a). But whoever with intent to commit, or at the time of or immediately before or after committing, the crime of piracy in respect of any ship, assaults with intent to murder any person on board the ship, or who stabs, cuts, or wounds any such person, or unlawfully does any act whereby the life of such person may be endangered, must be sentenced to death (b).

**SUB SECT. 2—Slave Trade**

**Carrying off**  
**persons as**  
**slaves etc.**

**1064** Any British subject or anyone residing within the King's dominions is by statute (c) to be deemed guilty of piracy who upon the high seas or in any haven, river, creek, or place within Admiralty jurisdiction knowingly and wilfully (1) carries away any person as a slave, or for the purpose of such person being imported as a slave, into any place whatsoever, or for the purpose of such person being sold, used, or dealt with as a slave, or (2) on the high seas or within the King's dominions ships, receives, detains, or confines on board ship any person for any such purpose.

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (d).

**Slave dealing**  
**etc.**

**1065** Every person is by statute (e) guilty of a felony (1) who deals or trades in slaves or persons intended to be dealt with as slaves, (2) imports or contracts for importing into any place slaves or other persons in order that they may be dealt with as slaves, (3) ships, receives, detains, or confines on board any such persons for the purpose of their being dealt with as slaves; (4) fits out or navigates ships for any of the above purposes, (5) lends or

(a) Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 3, Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(b) Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 2. As to the condemnation of property captured from pirates and the restitution to owners, see Piracy Act, 1850 (13 & 14 Vict. c. 26), s. 5, and title ADMIRALTY, Vol. I, p. 76.

(c) Slave Trade Act, 1824 (5 Geo. 4, c. 113), s. 9. As to the jurisdiction of the Admiralty Division of the High Court in regard to the condemnation of vessels etc. seized under the Slave Trade Acts, see title ADMIRALTY, Vol. I, p. 78.

(d) *Ibid.*, Punishment of Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 91), s. 1, Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(e) Slave Trade Act, 1824 (5 Geo. 4, c. 113) s. 10. Offences under this section are not, it seems, excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

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becomes security for money or goods to be employed for such purposes, or (6) knowingly and wilfully becomes guarantee for agents employed with the same object, or engages in any such adventure as partner, agent, or otherwise, (7) ships money or goods to be employed for such purposes, (8) acts as master, mate, surgeon or supercargo of any ship so employed, (9) insures any slaves or any property so employed, or (10) forges or utters any certificate, sentence, or receipt required by the Slave Trade Act, 1824 (*f*)

The punishment for any such offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*)

**1066** A British subject is equally guilty of any of the above offences, whether the acts alleged were committed within or without the King's dominions (*h*) But there is nothing in the Slave Trade Acts to prohibit a contract by a British subject for the sale of slaves lawfully held by him in a foreign country where the possession and sale of slaves is lawful (*i*)

Acts  
committed  
outside the  
King's  
dominions

#### SUB SECT. 3.—*Decoying Pacific Islanders*

**1067** Any British subject is by statute (*j*) guilty of felony (1) who decoys a native of an island in the Pacific Ocean (not being in His Majesty's dominions nor within the jurisdiction of any civilised power) for the purpose of importing or removing him into any other island or place, or carries such native away or confines or detains him for such purpose without his consent, or (2) who for that purpose ships or detains such native without his consent; or (3) who contracts for such shipping etc., or (4) who fits out, navigates, lets, employs, commands, or serves in or is on board of any vessel with intent to commit any such offence, or (5) who puts money or goods on board any vessel with the knowledge that such money and goods will be so employed

Kidnapping  
Act, 1872.

(*f*) 9 Geo 4, c 113, s 10

(*g*) *Ibid* s 10, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 There are also pecuniary forfeitures provided for the above offences by the Slave Trade Act, 1824 (5 Geo 4, c 113), ss 2—8, as to the recovery of which see s 12, and the Slave Trade Act, 1873 (36 & 37 Vict c 88), s 25 The last-mentioned Act contains provisions for the seizure by officers of the Royal Navy of vessels equipped for trading in slaves and for their condemnation by courts having jurisdiction in Admiralty As to the place of trial of all offences against either of the above Acts, see the Slave Trade Act, 1873 (36 & 37 Vict c 88), ss 24, 26, p 285, *ante*, as to the form of the indictment, see *R v Jennings* (1844), 1 Cox, (1) C 115

(*h*) *R v Zulusta* (1843), 1 Car & Kir 215

(*i*) *Santos v Illidge* (1860), 8 C B (N S) 861, Ex Ch See further as to such contracts, *Mittelholzer v Fullarton* (1842), 6 Q. B 989, and as to the circumstances under which ships supposed to be engaged in the slave trade may be seized, see *Madrazo v Willes* (1820), 3 B & Ald 363, *Buron v Deannan* (1848), 2 Exch 167, *Osanova v R, The Ricardo Schmidt* (1860), L R 1 P (1) 208, *The Laura* (1866), 13 L T 133, P C *Hocquard v R, The Newport* (1858), 6 W. R 310, *R v Casaca* (1880), 5 App Cas 548, P C

(*j*) Kidnapping Act, 1872 (35 & 36 Vict c 19), s 9.

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**Offences**  
**on the**  
**High Seas**

Anyone charged with such an offence may be tried in any supreme court of justice in any of the Australian colonies and sentenced to the highest punishment, other than capital punishment, awarded for any felony by the law of the colony in which he is tried, and any person who aids and abets such an offender may be tried and punished in the same way (*k*)

**SECT 9 — Offences relating to Foreign Nations.**

**SUB SECT 1 — Offences with respect to Diplomats.**

**Suing**  
**ambassador.**

**1068** Any person suing forth or prosecuting any writ or process interfering with the freedom from legal process enjoyed by ambassadors and other public ministers of foreign States, and, in certain circumstances, their households (*l*), and any solicitor acting in such a case, and any officer executing such writ or process, upon conviction thereof before the Lord Chancellor and the Lord Chief Justice, is by statute to be deemed a violator of the law of nations and a disturber of the public repose, and is liable to such pains, penalties, and corporal punishment as they may judge fit to be imposed (*m*)

**Libel on**  
**ambassador**

A libel on a foreign ambassador is a common law misdemeanour punishable as tending to interrupt the pacific relations between this country and the nation which he represents (*n*).

**SUB-SECT 2 — Foreign Enlistment**

**Foreign**  
**Enlistment**  
**Act, 1870**

**1069** It is by statute (*o*) a misdemeanour (1) for any British subject, within or without the King's dominions, to accept, or agree

(*k*) Kidnapping Act, 1872 (35 & 36 Vict c 19), s 10

(*l*) See title CONSTITUTIONAL LAW, Vol VI, p 428

(*m*) Diplomatic Privileges Act 1708 (7 Ann c 12), ss 3, 4 The Act will not protect members of a public minister's suite or household who are occupied in trading (s 5), and no person is to be proceeded against for having arrested the servant of an ambassador, unless the servant's name has been registered in the office of a Secretary of State and by him transmitted to the sheriffs or under sheriffs of London and Middlesex (s 6) The privilege of a person who has been appointed an ambassador from being sued and from arrest extends for such a reasonable period after he is recalled as is necessary to enable him to wind up his official business and prepare for his return to his country, even though his successor has been appointed (*Marshall v Crutten* (1808), 9 East, 447, *Musurus Bru v Gadban*, [1894] 1 Q B 533, 2 Q B 352, C A) See title ACTION, Vol I, p 19

There is no known instance of any proceeding against any person under s. 4 of the Diplomatic Privileges Act, 1708 (7 Ann c 12) The Act seems to contemplate a summary proceeding without the intervention of a jury, and has, probably, no application to arrest on criminal process, see p 245, *ante*.

(*n*) *R v d'Eon* (1764), 1 Wm Bl 510, 517, 2 Chitty, Criminal Law, 54, see *R v Peltier* (1803), 28 State Tr 529, 617 As to obtaining a passport by fraud, see *R v Braslford*, [1905] 2 K B 730

(*o*) Foreign Enlistment Act, 1870 (33 & 34 Vict c 90), ss 4—11 It has been said that it was a misdemeanour at common law to enter the service of any foreign State without the leave of the King (1 East, P. C 81) Mercenary service abroad was very common before the passing of the Foreign Enlistment Act, 1870 It is stated by Coke that it is unlawful for a British subject to receive a pension from a foreign King or State without the King's licence (3 Co Inst.

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Act, 1870.

to accept, without the King's licence, any commission or engagement in the military or naval service of any foreign State at war with any friendly State (i.e., a foreign State which is at peace with His Majesty), or (2) for anyone, whether a British subject or not, within the King's dominions to induce any other person to accept any such commission or engagement (p), (3) for any British subject without the King's licence to quit, or go on board any ship with a view of quitting, the King's dominions with intent to accept any such commission or engagement (q), (4) for anyone, whether a British subject or not, within the King's dominions to induce any other person to quit, or to go on board any ship with a view of quitting, the King's dominions with the like intent, (5) for anyone to induce any other person to quit the King's dominions under a misrepresentation or false representation of the service in which such person is to be engaged with the intent or in order that such person may accept or agree to accept any such commission (r), (6) for the master or owner of any ship without such licence knowingly to take or engage to take or to have on board such ship within the King's dominions any British subject who without the King's licence has accepted such a commission or engagement, or is about to quit the dominions with intent to accept any such commission etc., or any person who has been induced to embark under a false representation of the service in which he is to be engaged with the intent that he may accept any such commission or engagement (s), (7) for any person within the King's dominions and without such licence either to build or agree to build or cause to be built any ship with intent or knowledge or having reasonable cause to believe that it will be employed in the military or naval service of any foreign State at war with a friendly State, or to issue any commission for, or equip or despatch, or allow to be despatched, any ship with the like intent or knowledge (t), (8) for any person within the King's dominions, by adding to the number of guns or any equipment of war, to increase without the King's licence the warlike force of any ship which, at the time of her being within the dominions, was in the naval service of any

144) As to taking military service under a prince or State in India, see Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90)

(p) *Ibid.*, s. 4. See *R v Rumble* (1864), 4 F. & F. 170. As to definition of a foreign State, see *ibid.*, s. 30

(q) *Ibid.*, s. 5

(r) *Ibid.*, s. 6

(s) *Ibid.*, s. 7

(t) *Ibid.*, s. 8, see *R v Sandoval* (1887), 3 T. L. R. 411, *A-G v Silem* (1863), 2 H. & O. 431, *R v Rumble*, *supra*. But a person building or equipping a ship in pursuance of a contract made before the commencement of the war is not liable to the penalties imposed for building or equipping, if forthwith upon the King's proclamation of neutrality such person gives notice to a Secretary of State that he is building or equipping the ship, and gives him such particulars of the contract as he may require, and gives such security and permits such other measures to be taken as the Secretary of State may prescribe for ensuring that the ship shall not be removed without the King's licence until the termination of the war (*ibid.*, s. 8). See s. 9 as to the presumption that a vessel built for and used by the foreign State was built with a view to its being so employed. To let a tug to one of the

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foreign State at war with a friendly State (*u*); (9) for any person within the King's dominions and without the King's licence to prepare or fit out any naval or military expedition against the dominions of any friendly State, or to be engaged or employed in such preparation or fitting out or assisting therein or to be employed in any capacity in such expedition (*a*)

If the illegal expedition be prepared within the King's dominions, the participation in it by a British subject outside such dominions is an offence against the Act (*b*)

**Punishment**

The punishment for any such offence is fine and imprisonment at the discretion of the court, with or without hard labour, for not more than two years (*c*). In addition to such punishment, in the case of illegal shipbuilding (*d*) the ship, with her equipment, is forfeited to the King, and in the case of illegally fitting out an expedition all ships and their equipments and all arms and munitions of war used in the expedition are forfeited to the King (*e*).

## Part XI.—Offences against Public Order.

### SECT 1—*Offences against Religion (f).*

#### SUB-SECT 1—*Blasphemy*

**Blasphemy**

**1070** Blasphemy is a misdemeanour at common law punishable by fine and imprisonment without hard labour. It consists in

combatants for the purpose of towing a prize with a prize crew on board to the home waters of the captor is the despatching of a ship for the purpose of taking part in the naval service of such combatant (*Dyke v Elliott, The Gauntlet* (1872), 1, R 4 P C 181). But a telegraph ship employed to lay a cable to be used for civil and postal purposes is not such a ship, even though there is a possibility that the cable may also be used for military purposes (*The International* (1871), L R 3 A & E 321).

(*u*) Foreign Enlistment Act, 1870 (33 & 34 Vict c 90), s 10

(*a*) *Ibid*, s 11. See *R v Sandoval* (1887), 3 T L R 411, 436, 498, *R v Jameson* (1896), Shortland Notes, I, 348

(*b*) *R v Jameson*, [1896] 2 Q B 425. As to powers of search, seizure, and detention of suspected vessels by the Secretary of State and certain public officers, see Foreign Enlistment Act, 1870 (33 & 34 Vict c 90) ss 21–29

(*c*) Foreign Enlistment Act, 1870 (33 & 34 Vict c 90), ss 4–8, 10, 11, 13

(*d*) *Id*, when a person commits an offence under s 8 of the Act

(*e*) Foreign Enlistment Act, 1870 (33 & 34 Vict c 90), s 11. Any overt act of preparation for such an expedition, as by the purchase of guns in this country which are sent to a foreign port to be shipped there on the vessel in which the expedition is to be made, is an offence against the Act (*R v Sandoval* (1887), 16 Cox, C C 206). Accessories are punished as principal offenders (Foreign Enlistment Act, 1870 (33 & 34 Vict c 90) s 13). Offences against the Act are not expressly excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1), but manifestly ought not to be tried there

(*f*) The offences mentioned in this section are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s. 1).

**SECT 1**  
**Offences**  
**against**  
**Religion.**

(1) scoffingly or irreverently ridiculing or impugning the doctrines of the Christian faith, or (2) in uttering or publishing contumelious reproaches of Jesus Christ, or (3) in profane scoffing at the Holy Scriptures or exposing any part thereof to contempt or ridicule

It is not blasphemy with due gravity and propriety to contend that the Christian religion or any part of its doctrine, or the whole or any part of the Holy Scriptures, is untrue (g)

It is immaterial whether the blasphemous words were spoken or written, in the latter case they constitute a blasphemous libel.

No criminal prosecution can be commenced against the proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a judge at chambers being first obtained (h)

**SUB-SECT 2—Offences against the Church of England**

**1071** Anyone who utters or publishes seditious words in derogation of the established religion is at common law guilty

**Seditious**  
**attacks on the**  
**established**  
**religion**

(g) 1 Hawk P C, c 26, ss 1, 2 (8th ed, Vol I, 358), 4 Bl Com 50, Starkie on Libel, 2nd ed, 145—147, approved by Lord COLFORD, C J, in *R v Ramsay and Foote* (1883), 15 Cox, C C 231, *R v Woolston* (1729), 2 Stra 834, *Shore v Wilson* (1842), 9 Cl & Fin 355, 524, 539, 11 L J, *R v Waddington* (1822), 1 B & C 26, *R v Hetherington* (1840), 4 State Tr (N S) 563, 590, and see the summing up of ABBOTT, C J, in *R v Carlisle* (1819) at col 1424 of the same volume, *R v Bradlaugh* (1883) 15 Cox, C C 217, *R v Ramsay and Foote*, *supra*, *R v Boulter* (1908), 72 J P 186

Some authorities, both old and modern, lay down the proposition that any denial of the truth of Christianity in general or of the existence of God, however decent may be the terms of such denial, is by the common law punishable as blasphemy (see STEPHEN, J. Digest of the Criminal Law, 5th ed, p 121, see also 1 Hawk P C, c 26, s 1, *R v Woolston*, *supra*, *R v Eaton* (1812), 31 State Tr 927, 950, *R v Gathercole* (1838), 2 Lew U C 237, 251 (*Cowan v Milbourn* (1867), L R 2 Exch 230, 234, *Pankhurst v Thompson* (1868), 3 T L R 199) In *R v Boulter*, *supra*, PHILLIMORE, J, approved of the summing up of Lord COLERIDGE, C J, in *R v Ramsay and Foote*, *supra*, and disapproved of the view expressed by STEPHEN, J. The stat. (1698) 9 Will 3, c 35, enacts that if any person, having been educated in, or at any time made profession of, the Christian religion, should by writing, printing, teaching, or advised speaking deny any one of the Persons in the Holy Trinity to be God, or assert or maintain that there are more gods than one, or deny the Christian religion to be true or the Holy Scriptures to be of divine authority, he should upon conviction upon indictment or information be adjudged incapable of holding any office, and upon a second conviction should suffer other incapacities and be imprisoned for three years, but in the case of words spoken information of the words complained of must be given upon oath to a justice of the peace within four days, and the prosecution be within three months thereafter, if, in the case of a first offence, the person convicted acknowledged and renounced in court his offence or erroneous opinions within four months after conviction, he was to be discharged from further disabilities. The provisions of this Act were, "so far as the same relate to persons denying as therein mentioned respecting the Holy Trinity," repealed by stat (1813) 53 Geo 3, c 160, s 2, see as to this statute, per BEST, J, in *R v Carlisle* (1819), 3 B & Ald 161, 167, and *Cowan v Milbourn*, *supra*, at p 231. It is believed that there has never been a prosecution for an offence against stat (1698) 9 Will 3, c 35, the provisions of which do not alter the common law (*R v Carlisle*, *supra*)

It has been held in Ireland to be an offence at common law to burn a Bible contemptuously (*R v Pelcherin* (1856), 7 Cox, C C 79)

(h) Law of Libel Amendment Act, 1888 (51 & 52 Vict c 64), s 8, see title **LIBEL AND SLANDER**

**SECT 1**  
**Offences**  
**against**  
**Religion**

**Depraving**  
**the**  
**Sacrament**

**Depraving**  
**the Book**  
**of Common**  
**Prayer**

**Punishment**

**Priest of the**  
**Church of**  
**England**  
**refusing to**  
**conform to**  
**the Book**  
**of Common**  
**Prayer**

**Punishment**

of a misdemeanour and is punishable by fine and imprisonment (i)

**1072** Anyone is by statute (k) guilty of a misdemeanour who depraves, despises, or contemns the Sacrament of the Lord's Supper by any contemptuous words or otherwise. The punishment for this offence is imprisonment and fine at the King's pleasure.

**1073** Anyone is by statute (l) guilty of a misdemeanour who in any plays, songs, rhymes, or by other open words, speaks anything in derogation, depraving, or despising of the Book of Common Prayer or of anything therein contained, or causes the minister in any parish church etc. to use any other form of prayer, or interrupts a clergyman saying prayer in the manner set out in the Book of Common Prayer.

The punishment is a fine of 100 marks for the first and 400 marks for the second offence, and for the third offence the forfeiture of all goods and chattels and imprisonment for life (m).

**1074** Any priest or other minister of the Church who ought to say common prayer or minister the sacraments is by statute (n) guilty of a misdemeanour, if he refuses to do so in the order set forth in the Book of Common Prayer, or if he uses any other rite, ceremony, or form than is therein contained, or preaches or speaks anything in derogation or depraving of the Book of Common Prayer or of anything therein contained.

The punishment is for the first offence the forfeiture to the King of the profit of the offender's spiritual benefices for one year and imprisonment for six months, for the second offence deprivation of all his spiritual promotions and imprisonment for a year (or for life if he has no such promotions), and for the third offence a similar deprivation and imprisonment for life (o).

**SECT 2 —Offences relating to Marriage**

**SUB SECT 1 —Bigamy**

**Bigamy.**

**1075** Subject to the qualifications hereafter mentioned, everyone is guilty of felony (p) who, being married, marries any other person

(i) 1 Hawk P C, c 26, s 5 (8th ed., Vol I, 308), *R v Gathercole* (1835), 2 Low C C 237, 254. But see the observations of Lord COLERIDGE, C J, in *R v Ramsey and Route* (1883), 48 L T 733, 735. The statement in the text must now be taken with the qualification that the words, to be indictable, must be ribald, irreverent, and contumelious, and even with that qualification the offence is practically obsolete. Profane swearing is punishable on summary conviction (Profane Oaths Act, 1745 (19 Geo 2, c 21), s 1). As to disturbing public worship, see p 477, ante.

(k) (1547) 1 Edw 6, c 1, s 1, revived by (1558) 1 Eliz c 1, s 15, see also (1553) 1 Mar sess 2, c 3.

(l) Stat. (1558) 1 Eliz c 2, ss 9, 10, 11, stat. (1662) 14 Car 2, c 4, s 20. The expression "mark" is a "money of account" to express 13s 4d, and has long passed out of use.

(m) *Ibid*.

(n) Stat. (1558) 1 Eliz c 2, s 4.

(o) *Ibid*. As to limitation of time for the commencement of a prosecution, see *ibid*, s 20.

(p) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s 1.



during the life of the former wife or husband, whether the second marriage is in England or elsewhere (*q*)

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*r*) The offence is not triable at quarter sessions (*rr*)

SECT. 2.  
Offences  
relating to  
Marriage.

**1076** A person marrying a second time, whose wife or husband has been continually absent from such person for seven years then last past, and has not been known by such person to be living at any time within that period, cannot be convicted of bigamy (*s*)

Absence for  
seven years.

In the case of such an absence the presumption is in favour of innocence, and it is incumbent upon the prosecution to show that the prisoner knew that the wife or husband was alive (*t*) It is not sufficient to prove that the prisoner had the means of such knowledge (*u*).

Even if the statutory period of seven years has not elapsed, the *bona-fide* belief of the prisoner at the time of the second marriage that the husband or wife was dead, provided such belief was based on reasonable grounds, affords a good defence to an indictment for bigamy (*v*)

**1077** A person already married who, having the intention of appearing to contract a second marriage, goes through a form known to and recognised by the law as capable of producing a valid marriage, is guilty of bigamy, although the second marriage, even if it were not bigamous, would be otherwise invalid (*w*)

Invalid  
second  
marriage

**1078** If the first marriage is void by reason of consanguinity, affinity, lunacy, or any other defect, the second marriage is not

Void and  
voidable  
marriages.

(*q*) This includes not only the King's dominions, but any foreign country (*R v Russell (Earl)*, [1901] A C 446) It is also immaterial where the first marriage has been celebrated (2 Hale, P C 692) But where such second marriage is contracted elsewhere than in England or Ireland and the person who contracts it is not a British subject, he is not punishable by English law (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 45)

(*r*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 57

(*rr*) Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1

(*s*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 57, *R v Cullen* (1840), 9 C & P 681, *R v Jones* (1842), Car & M 614 The prisoner is entitled to the protection of the section, although he may have wilfully deserted his wife (*R v Faulkes* (1903), 19 T L R 250)

(*t*) *R v Heaton* (1863), 3 F & F 819, *R v Curganuen* (1865), L R 1 C C R 41, compare *R v Jones* (1883), 11 Q B D 118, C C R, where, there being no evidence of the date of the separation between the prisoner and his wife, to whom he had been married seventeen years before the second marriage, or as to when he had last seen her, the court upheld the conviction

(*u*) *R v Briggs* (1856), Dears & B 98

(*v*) *R v Tolson* (1889), 23 Q B D 168, C C R

(*w*) *R v Allen* (1872), L R 1 C C R 367, 376 (marriage within the prohibited degrees), disapproving of the Irish case *R v Fanning* (1866), 10 Cox, C C 411, see also *R v Allison* (1806), Russ & Ry 109, *R v Brown* (1843), 1 Car & Kir 144, *R v Rea, supra* The rule laid down in *R v Allen* will not be applicable in the case of a second marriage by a form not known to and recognised by the law, as in *Burt v Burt* (1860), 2 Sw. & Tr.

**SMOKE 2.**  
**Offences**  
**relating to**  
**Marriage.**

Divorced  
 person.

bigamous (x) But if the first marriage is only voidable, as by reason of impotence, and has not been avoided at the date of the second marriage, the second marriage is bigamous (y)

**1079** If the first marriage has been dissolved by a divorce à *vinculo matrimonii* before the date of the second marriage, or has been declared void by any court of competent jurisdiction, the second marriage is not bigamous (z), but it is otherwise, if there has only been a judicial separation, or if a decree nisi for divorce has not been made absolute (a)

An English court will only recognise the validity of a divorce obtained abroad, where at the date of the institution of proceedings for divorce the parties were domiciled within the jurisdiction of the court pronouncing the decree, or where the State of the domicile recognises such divorce and where the court which pronounced the decree was competent by the laws of the country which gave it jurisdiction (b) Where the parties had only a "matrimonial residence," and not a domicile in the ordinary sense within the foreign jurisdiction, the validity of the divorce will not be recognised (c), and any British subject who remarries subsequently in the lifetime of his wife may be convicted of bigamy (d)

The other party to the bigamous marriage is punishable as a principal in the second degree, if he or she knew at the time of such marriage that the previous marriage was still subsisting (e)

Evidence

**1080** It is for the prosecution to prove the celebration of the first marriage and the identity of the parties If the marriage is alleged by the accused to be invalid on the ground of consanguinity, informality etc., he must adduce evidence of such invalidity If the celebration of the first marriage is proved, the presumption, in the absence of evidence to the contrary, is in favour of the validity of the marriage (f)

An actual marriage must be proved Evidence of reputation and cohabitation are not sufficient to support the indictment (g)

The prisoner's admission of the first marriage is, it seems,

(r) *R v Chadwick* (1847) 11 Q B 205 230, *R v Willshire* (1881), 6 Q B D 366, *R v Mills* (1841), 10 Cl & Fin 534, H L.

(y) 3 Co Inst 88, *R v Jacobs* (1826) 1 Mood C C 140, *B v B* (1891), 27 L R Ir 587, 608

(z) Offences against the Person Act, 1861 (24 & 25 Vict c 100) s 57

(a) See *Norman v Villars* (1877), 2 Ex D 359, C A *Stanhope v Stanhope* (1886), 11 P D 103 109, C A

(b) See title CONFLICT OF LAWS, Vol VI, pp 266 *et seq.*, and *Bater v Bater*, [1906] P 209

(c) *Le Mesurier v Le Mesurier*, [1895] A C 517, P O

(d) *R v Russell (Earl)*, [1901] A C 446

(e) *R v Brown* (1843) 1 Car & Kir 144, 1 Russell on Crimes, 664, n

(f) *R v Allom* (1805) Russ & Ry 109, *R v Mainwaring* (1856), 26 L J (v c) 10, C O R., *R v Bea* (1872), L R 1 C O R 365, *R v Cresswell* (1876), 1 Q B D 446, C C R. As to the requirements for the validity of a marriage, see title HUSBAND AND WIFE *post*

(g) *Morris v Miller* (1767), 4 Burr 2057, *Catherwood v Oaslon* (1844), 13 M & W 261, 265 See *R v Wilson* (1862), 3 F & F 119

not sufficient evidence of the fact without proving the actual celebration (*h*)

A certified copy of an entry purporting to be sealed with the seal of the register office is receivable as evidence of the birth, death, or marriage to which it relates without further proof of such entry (*i*).

To prove the identity of the prisoner with the person named in the certificate it is not necessary to call as a witness one of the subscribing witnesses to the register, any evidence which satisfies the jury as to the identity of the parties is sufficient (*j*)

The first husband or wife is not (*k*), but, when the first marriage has been proved, the second wife is, a competent witness for the prosecution (*l*)

It must be proved to the satisfaction of the jury that the first husband or wife was alive at the date of the second marriage. The law makes no presumption on the subject (*m*)

SECT. 2.  
Offences  
relating to  
Marriage.

#### SUB-SECT. 2 - *Irregular Solemnisation of Marriage*

**1081** Everyone is by statute (*n*) guilty of a felony who (1), except by a special licence from the Archbishop of Canterbury, solemnises a marriage in any place other than a church or chapel in which marriages may be solemnised according to the rites of the Church of England, or a building which is duly registered under the Marriage Act, 1836 (*o*), or the office of a registrar of marriages, or (2) solemnises a marriage at any other time than between 8 a.m. and 3 p.m., except by such special licence, or (3) solemnises a marriage without due publication of banns except where such publication is not needed by law, or (4), falsely pretending to be in holy orders, solemnises matrimony according to the rites of the Church of England, or (5) being a registrar of marriages, knowingly issues a certificate for marriage after the expiration of three months from the date of the notice to be given by one of the parties intending to be married, or issues any certificate for marriage by licence

Irregular  
solemnisation  
of marriage

(*h*) *R v Juman* (1795), 1 East, P. C. 470, *R v Savage* (1876), 13 Cox, C. C. 178, *R v Flaherty* (1847), 2 Car. & Kil. 782, *R v Lindsey* (1902), 66 J. P. 505, and *Catherwood v Caslon* (1844), 13 M. & W. 261, 267. But see *R v Newton* (1843), 2 Mood & R. 303.

(*i*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 58.

(*j*) 1 East, P. C. 472, e.g. evidence of the handwriting of the parties to the register or that the bell-ringers at the wedding were paid by them are given as examples. A photograph has been admitted as evidence (*R v Tolson* (1864), 4 F. & F. 103, WILLES, J.)

(*k*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (*c*). See p. 405, note (*l*), *ante*.

(*l*) 1 Hale, P. C. 693, 1 East, P. C. 469.

(*m*) *R v Lumley* (1869), L. R. 1 C. C. R. 196, *R v Wiltshire* (1881), 6 Q. B. D. 366, C. C. R. If, however, the husband and wife have been separated for less than seven years, the prosecution need not prove affirmatively that the prisoner knew that his wife was alive. It is for him to disprove this (*R v Ellis* (1858), 1 F. & F. 309, *R v Jones* (1869), 11 Cox, C. C. 358, C. C. R.)

(*n*) Marriage Act, 1823 (4 Geo. 4, c. 76), s. 21, Marriage Act, 1836 (6 & 7 Will. 4, c. 85) ss. 39, 40, 41, Marriage Act, 1886 (49 Vict. c. 14), s. 1, Marriage Act, 1898 (61 & 62 Vict. c. 58). There are special provisions in these Acts with reference to Jews and Quakers.

(*o*) 6 & 7 Will. 4, c. 85.

**SECT 2**  
**Offences**  
**relating to**  
**Marriage**

before the expiration of seven days after the entry of the notice, or issues any certificate for marriage without licence before the expiration of twenty-one days after the entry of the notice, or issues any certificate the issue of which shall have been forbidden by any person authorised to forbid it, or knowingly and wilfully registers or solemnises in his office any marriage declared by the Marriage Act, 1836 (*p*), to be null and void

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*a*)

A prosecution for any of these offences must be commenced within three years after the commission of the offence (*b*)

Non-compliance  
in chapels etc

**1082** Every person is by statute (*c*) guilty of a misdemeanour who, being a person authorised by the trustees or other governing body of a building registered for the solemnising of marriages to solemnise marriage therein, refuses or fails to comply with the Marriage Act, 1898 (*d*), or the enactments or regulations for the time being in force with respect to the solemnisation and registration of marriages

The punishment for this offence is imprisonment with or without hard labour for not more than two years or a fine not exceeding £50, such a person on conviction for such an offence ceases to be an authorised person (*e*)

**Sub SECT 3—False Declarations and Notices**

False  
declaration.

**1083** A person who knowingly and wilfully makes a false declaration or signs a false notice or certificate required by the Marriage Act, 1836 (*f*), or the Foreign Marriage Act, 1892 (*g*), for the purpose of procuring a marriage, or who forbids the issue of the registrar's certificate, or forbids a marriage under the last-named Act by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false, incurs the penalties of perjury

The prosecution must be commenced within three years (*h*)

False  
statement

**1084** Everyone is subject to the same penalties as if he were guilty of perjury (*i*) who wilfully makes or causes to be made for the

(*p*) 6 & 7 Will 4, c 85, see also title HUSBAND AND WIFE

(*a*) Marriage Act, 1823 (4 Geo 4 c 76), s 21, Marriage Act, 1836 (6 & 7 Will 4, c 85) s 39, Criminal Law Act 1827 (7 & 8 Geo 4, c 28), s 8 If the prosecution is under the Marriage Act, 1823 the maximum sentence of penal servitude is fourteen years, see *ibid*, s 21 The offence, it seems, is triable at quarter sessions.

(*b*) Marriage Act, 1823 *supra* s 21 Marriage Act, 1836, *supra*, s 41

(*c*) Marriage Act, 1898 (61 & 62 Vict c 58), s 12

(*d*) 61 & 62 Vict c 58

(*e*) *Ibid*, s 12, see a person who is certified as such under the Marriage Act, 1898, *supra*, s 6 (3)

(*f*) 6 & 7 Will 4, c 85

(*g*) 55 & 56 Vict c 23 Offences under this sub-section are not triable at quarter sessions

(*h*) Marriage Act, 1836, *supra*, ss. 38, 41, Foreign Marriage Act, 1892, *supra*, s. 15 See also Marriage Act, 1898 (61 & 62 Vict c 58), s 12

(*i*) Births and Deaths Registration Act, 1836 (6 & 7 Will 4, c 86), s 41.

purpose of being inserted in any register of marriage any false statement as to the particulars which are required by the Births and Deaths Registration Act, 1836 (j), to be registered

The false statement, to be within the Act, must be wilfully and intentionally untrue and not a mere mistake (l)

SECT 3  
Offences  
against  
Decency  
and  
Morality.

### SECT 3—*Offences against Decency and Morality* (l).

#### SUB-SECT 1—*Indecent Exposure*

**1085** The public exhibition of the naked person or any other act of open and notorious lewdness is an indictable misdemeanour at common law (m) Similar exposure, even though in a place of public resort, is not indictable at common law, if it is only visible by one person (n) The exposure is indictable, although the place be not one of public resort, if the place be such that a number of persons can and do see the act (o)

Indecency.

Bathing in a state of nudity in a place near to which persons frequently pass is indictable (p)

The punishment for this offence is a fine and imprisonment with or without hard labour (q)

**1086** It is a common law misdemeanour (r) to keep a booth for the purpose of holding an indecent exhibition which persons are invited to come in and see, or to show on the highway a picture or exhibition which, although not indecent in the ordinary sense, is nevertheless disgusting and offensive (s)

Indecent  
exhibition.

(j) Births and Deaths Registration Act, 1836 (6 & 7 Will 4, c 86), s 41 and see p 742, *post*

(k) *R v Dunboyne* (Lord) (1850), 3 Cr & K 1 As to forging marriage certificates and forging or destroying marriage registers see p 741, *post*

(l) As to rape, see p 611, *post*, indecent assault, p 611, *post*

(m) *R v Sedley* (1663), 1 Sid 168, from which it appears that this offence had formerly been punishable in the Star Chamber See *R v Harris* (1871), 1 R 1 C C R 282, and the cases cited *infra* By statute every person who wilfully, openly, and obscenely exposes his person in any street, road, or public highway, or in the view thereof, or in any place of public resort with intent to insult any female, is to be deemed a rogue and vagabond and liable on summary conviction to three months' imprisonment (Vagrancy Act, 1824 (5 Geo 4, c 83), s 4, as to a repetition of the offence which makes the offender an incorrigible rogue, see s 5, 10)

(n) *R v Watson* (1847), 2 Cox C C 376, *R v Webb* (1845), 3 Cox, C C 183 C C R, *R v Farrell* (1862), 9 Cox, C C 446, C C R (Ir), but see Vagrancy Act, 1824 (5 Geo 4, c 83), s 1

(o) As on the roof of a house (*R v Thallman* (1863), 9 Cox, C C 388, C C R), or in a field off the footway where people frequently pass, though without the legal right to do so (*R v Willard* (1884), 14 Q B D 61, C C R)

(p) *R v Crunden* (1800), 2 Camp 89, *R v Reed* (1871), 12 Cox, C C 1

(q) Criminal Procedure Act, 1831 (14 & 15 Vict c 100), s 29 The offence and the offence next mentioned are triable at quarter sessions

(r) *R v Saunders* (1875), 1 Q B D 15, C C R, and a person who wilfully exposes to public view in any highway or public place any indecent exhibition may also be dealt with as a rogue and vagabond (Vagrancy Act, 1824 (5 Geo 4, c 83), s 4, Vagrancy Act 1838 (1 & 2 Vict. c 38), s 2)

(s) *R v Grey* (1864), 4 F & F 73.

**SECT 3**  
**Offences**  
**against**  
**Decency**  
**and**  
**Morality**

**SECT 2 --Indecent Publications**

**1087** Anyone is guilty of a common law misdemeanour who publishes any indecent matter tending to the destruction of the morals of society and to deprave and corrupt those whose minds are open to immoral influences (a)

**Indecent**  
**prints.**

**1088** It is a misdemeanour to procure indecent prints with intent to publish them, but it is not an offence to simply have possession of obscene prints or literature even with intent to publish them (b)

**Motive.**

**1089** If the necessary or natural effect of a publication is prejudicial to public morality or decency, the motive of the defendant in publishing the obscene matter is immaterial. If the work is manifestly obscene, the defendant will be taken to have published it with an unlawful intent, he cannot be heard to say that, though he broke the law, he did so from a wholesome and salutary purpose, and not for gain (c). But in many cases it is material to consider to whom and under what circumstances the publication is made. Some matters may be properly published to practitioners or students of medicine or surgery, the publication of which to boys or girls or even to the public indiscriminately would necessarily tend to the corruption of morals and therefore be illegal (d). The privilege which the law gives to reports of judicial proceedings does not extend to reports containing matters of an obscene and demoralising character (e).

**Obscene libel**  
**in newspaper**

A prosecution cannot be commenced against the proprietor, publisher, editor, or any person responsible for the publication of

(a) *R v Curl* (1727), 2 Stra 788, which seems to have been the first successful prosecution for this offence in a temporal court. In *R v Rad* (1707), 11 Mod Rep 142, the court had held that the publication of an obscene book was not indictable, but was punishable only in a spiritual court. See now *R v Hicklin* (1868), 1 L R 3 Q B 360, 371, *R v Bradlaugh*, [1906] 1 K B 201, C C R.

(b) *Dugdale v R* (1853), 1 E & B 435, *R v Rosenstein* (1826), 2 C & P 414. But possession of such prints etc may be evidence of procuring (p 260, ante).

(c) *R v Hicklin* (1868), 1 L R 3 Q B 360, *Steele v Brannan* (1872), L R 7 C P 261.

(d) *R v Hicklin*, *supra*.

(e) *Steele v Brannan*, *supra*, *R v Carlile* (1819) 3 B & Ald 167, *R v Creevey* (1813), 1 M & S 273, 281, and see Law of Libel Amendment Act, 1888 (31 & 52 Vict c 64), ss 3, 4. Provision has been made for the search for and seizure of obscene books or pictures. A stipendiary police magistrate or any two justices, upon complaint being made on oath, may issue a warrant to search any premises where the complainant alleges he has reason to believe that any obscene books, writings, or pictures are kept for sale or distribution, or exhibition for purposes of gain, or lending on hire, or otherwise published for gain, if such articles are seized upon the execution of the warrant, the occupier of the premises may be summoned to show cause why such articles should not be destroyed, and upon the hearing of the summons the justices, if satisfied that they are of the character stated in the warrant and have been kept for the purposes aforesaid, and that their publication would amount to a misdemeanour, may order them to be destroyed (Obscene Publications Act, 1857 (20 & 21 Vict. c. 60), s 1, and see *R v Hicklin*, *supra*, *Ex parte Bradlaugh* (1878), 3 Q B D. 609).

a newspaper for any obscene or other libel published therein without an order of a judge at chambers being first obtained (*f*)

Upon a prosecution for an obscene libel it is not necessary to set out the obscene passages in the indictment, but the alleged libel, with the obscene passages identified, may be deposited with the indictment (*g*)

The punishment for the above-mentioned offences is fine and imprisonment with or without hard labour (*h*).

**SECT. 2.**  
**Offences against Decency and Morality.**

**1090** Everyone is guilty of a misdemeanour (*i*) who sends or attempts to send a postal packet which encloses any indecent or obscene print, painting, photograph, lithograph, engraving, book, or card, or any indecent or obscene article, or has on such packet or its cover any words, marks, or designs of an indecent, obscene, or grossly offensive character

**Sending indecent prints etc. by post.**

The punishment for this offence on conviction on indictment is imprisonment with or without hard labour for twelve months (*j*).

### SUB-SECT. 3.—Unnatural Offences

**1091** It is a felony by statute (*k*) to commit the abominable crime of buggery either with mankind or with any animal

**Unnatural offences.**

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*l*)

(*f*) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 61), s. 8

(*g*) *Ibid.*, s. 7, see *R. v. Barracough*, [1906] 1 K. B. 201, C. C. R.

(*h*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29 These offences are triable at quarter sessions

(*i*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 63 (1) (b) See *R. v. De Marny*, [1907] 1 K. B. 388, C. C. R., for a prosecution under the corresponding section of the Post Office Protection Act, 1861 (24 & 25 Vict. c. 6), s. 4, now repealed. Post Office regulations may be made for preventing the sending or delivery by post of any obscene prints (*ibid.*, s. 16)

(*j*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 63 (2) The offence is triable at quarter sessions Upon summary conviction the punishment is a fine of £10 (*ibid.*)

Affixing to or inscribing on any house, wall, hoarding etc. so as to be visible to a person passing along any street or footpath, or to or on any urinal, or delivering or exhibiting to passers-by, any picture or printed or written matter which is of an indecent or obscene nature is on summary conviction punishable by a fine of £2 or imprisonment for a month (Indecent Advertisements Act, 1889 (52 & 53 Vict. c. 15), s. 3) As to certain forms of advertisement which the Act declares to be indecent within the meaning of this section, see s. 5 A person who gives to any other person any such pictures or printed or written matter with intent that the same should be so affixed, inscribed or delivered is liable to a penalty of £5 or imprisonment for three months (*ibid.*, s. 4)

(*k*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 61

(*l*) This offence was probably first made punishable by the common law courts by stat. (1533-1) 20 Hen. 8, c. 6 (2 Stephen, History of the Criminal Law, 429) See, however, 1 Hawk. P. C., c. 4 The punishment by 25 Hen. 8, c. 6, was death, and it so remained until the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 61 of which fixed the minimum punishment at ten years' penal servitude the minimum punishment was abolished by the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1)

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Everyone is by statute (*m*) guilty of a misdemeanour who attempts to commit this crime, or is guilty of any assault with intent to commit it or of any indecent assault upon any male person

The punishment for such offence is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour for not more than two years (*n*)

**Sodomy**

**1092** The offence of sodomy can only be committed *in ano* (*o*). It may be committed by a man upon a woman (*p*), even upon his own wife (*q*). It is sufficient to prove any degree of penetration, though without emission (*r*). Consent is no defence, and a person who consents to the commission or the attempted commission of the offence upon him is guilty as a principal, unless he be under the age of fourteen (*s*). A man who induces a boy under fourteen years of age to commit such an act upon him is guilty of this offence (*t*), but, it seems, a boy under fourteen cannot be convicted of sodomy (*u*).

Upon an indictment for an unnatural offence, if the evidence does not show that the offence was completed, the accused may be convicted of an attempt to commit it (*r*). Evidence cannot be given of a previous admission by the prisoner that he had habitually committed and had a natural inclination to commit such practices, unless such a statement is made at or about the time of the commission of the offence or on the prisoner's arrest (*y*).

When the person upon whom the offence is committed is a consenting party, and therefore an accomplice, the accused should

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 62

(*n*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions. As to the power to inflict a fine upon a person convicted of this and of any other indictable misdemeanour against the Offences against the Person Act, 1861, see s 71 of that Act and p 412, *ante*. As to requiring a person convicted of any felony punishable under the Offences against the Person Act, 1861, otherwise than with death to enter into recognisances and find sureties for good behaviour and to keep the peace, see s 71 of that Act.

(*o*) *R v Jacobs* (1817), Buss & Ry 331

(*p*) *R v Wiseman* (1718), Fortes Rep 91, though some of the judges doubted, see also Swaburn on Wills, 7th ed., Vol I, 179

(*q*) *R v Jellyman* (1838), 8 C & P 604

(*r*) *R v Reekpear* (1832), 1 Mood C C 342, Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 63

(*s*) 3 Co Inst 59, 1 Hale, P C 670, but upon a charge of assault with intent to commit sodomy consent will afford a defence, unless the person alleged to be assaulted is under the age of thirteen years (Criminal Law Amendment Act, 1880 (43 & 44 Vict c 45), s 2), or is of such an age or in such a physical condition as to be ignorant of the nature of the act intended to be done, as mere submission without acquiescence does not amount to consent (*R v Wollaston* (1872), 12 Cox, C C 180, O C R., *R v Luck* (1872), L R 2 C C R. 10).

(*t*) *R v Allen* (1848), 1 Den 364

(*u*) See p 239, *ante*

(*x*) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 9

(*y*) *R v Cole* (1810), 3 Russell on Crimes, 251, O C R.



not be convicted on the evidence of the accomplice alone without corroborating evidence (z).

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Morality.

**1093** Every person who solicits or attempts to solicit a person to the commission of sodomy is guilty of a misdemeanour at common law (a)

The punishment for this offence is fine, and imprisonment with or without hard labour (b)

Soliciting

**1094** Bestiality can be committed by either man or woman (c) and with any animal (d) As in sodomy, any degree of penetration is sufficient without proof of emission (e) If the prosecution is delayed for an unreasonable time, the case should not be allowed to go to the jury (f)

Bestiality.

**1095** Any male person is by statute guilty of a misdemeanour (g) who in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person (h)

Gross  
indecency  
with a male  
person.

The punishment for this offence is imprisonment for two years with or without hard labour (i)

#### SUB SECT. 4.—*Disorderly Houses*

**1096** Anyone is guilty of a misdemeanour at common law, punishable by fine or imprisonment with or without hard labour (j), who keeps a common ill-governed and disorderly house (k) Bawdy

Disorderly  
houses.

(z) *R v Jellyman, supra*, *R v Tate*, [1908] 2 K B 680, O C R, and see pp 388, 408 *ante*

(a) *R v Ransford* (1874), 13 Cox, O C 9, C C R, 2 Chitty, Criminal Law, 50 See also Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 11, *infra* The common law offence is triable at quarter sessions

(b) This offence is triable at quarter sessions

(c) 3 Co Inst 59, 1 Hale, P C 669

(d) *R v Brown* (1889), 24 Q B D 357, O C R

(e) *R v Cozens* (1834), 6 C & P 351

(f) *R v Robins* (1844), 1 Cox, O C 114

(g) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 11 Where attempted sodomy or an assault with intent to commit that offence or an indecent assault is alleged to have been committed upon a child, the provisions in the Children Act, 1908 (8 Edw 7, c 67), ss 28—31, with reference to taking the depositions of the child (as to which, see p 408, *ante*) will apply

(h) This will include the defendant himself (*R v Jones*, [1896] 1 Q. B 4, O C R)

(i) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69) This offence is not triable at quarter sessions (*ibid*, s 17)

(j) Hard Labour Act, 1822 (3 Geo 4, c 114), *R v Higginson* (1762), 2 Burr 1232

(k) 3 Co Inst 205, Hard Labour Act, 1822 (3 Geo 4, c. 114) By statute (Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 14), any person who (1) keeps or manages or assists in the management of a brothel; or (2) being the tenant, lessee, or occupier of any premises knowingly permits them to be used as a brothel or for the purposes of habitual prostitution, or (3) being the lessor or landlord of any premises, or his agent, lets them or any part thereof with the knowledge that they are to be used as a brothel, or is wilfully a party to the continued use of such premises as

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**Morality.**

**Brothels.**

houses or brothels (*l*), unlicensed places of entertainment in the metropolis, gaming houses and betting houses are disorderly houses (*m*).

(1) *Brothels*

**1097** A "brothel" means a place resorted to by persons of both sexes for the purpose of prostitution. A prostitute receiving men only into her own rooms cannot be convicted of keeping a brothel (*n*).

It is not necessary to constitute the offence that there should be any indecency or disorderly conduct perceptible from the exterior, or that the premises should have caused a nuisance to the neighbours (*o*), nor is it necessary, upon a prosecution for the common law offence, to show that the defendant was the real owner or keeper of the brothel. It is sufficient that he appeared, acted, or behaved himself as such or as the person having the management of the house (*p*).

The offence of permitting a house to be used as a brothel is a continuing one, and the permitting may therefore be charged in the indictment as extending over several days (*q*).

**Procuration**

**1098** Everyone is by statute (*a*) guilty of a misdemeanour (1) who procures or attempts to procure any woman to leave the United Kingdom with intent that she may become an inmate of a

a brothel, is liable on summary conviction to a fine of £20 or imprisonment for three months, and on a subsequent conviction to a fine of £40 or imprisonment for four months. A licensed victualler who is convicted of permitting his premises to be a brothel is liable to a fine of £20, forfeits his licence, and is disqualified for ever from holding any licence for the sale of intoxicating liquors (Licensing Act 1872 (35 & 36 Vict c 94) s 15). See *R v Holland (Justices)* (1882), 46 J P 312. See also s 14 as to harbouring prostitutes.

(1) The offence is triable at quarter sessions, see Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 5, see *R v Charles* (1861), Le & Ca 90.

(*m*) See also titles GAMING AND WAGERING, THEATRES. As to disorderly inns, see p 555, *post*, and titles INNS AND INNKEEPERS, INTOXICATING LIQUORS.

(*n*) *Singleton v Ellison*, [1895] 1 Q B 607. In this case the charge against the defendant, a prostitute, was that of "keeping a brothel" within the meaning of the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 13. If the charge had been under the same section that she, as tenant or occupier of the premises, permitted them to be used for the purposes of habitual prostitution, it is submitted that she might have been convicted of that offence. If several flats in a block of buildings under one roof are used for the purpose of prostitution, the whole block may be a brothel (*Dunrose v Wilson* (1907), 71 J P 263).

(*o*) *R v Holland (Justices)* (1882), 46 J P 312, *per* GROVE, J, at p 312, *R v Rice* (1886), L R 1 C C R 21.

(*p*) Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 8, see ss 5, 6, 7, as to complaint by two inhabitants of the parish with a view to compel a prosecution. Upon such a complaint being made and the security required by that Act being given, a warrant must be issued for the arrest of the person alleged to be keeping a brothel, who is then bound over to appear at next quarter sessions or assizes to answer any indictment which may be found against him (*ibid*, s 6, see Disorderly Houses Act, 1818 (58 Geo 3, c 70), s 7). These provisions are applied by the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 13, with the necessary modifications, to prosecutions for the offences mentioned in that section (see *R v Newton*, [1892] 1 Q B 648).

(*q*) *Ex parte Burnby*, [1901] 2 K B 458.

(*a*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s. 2 (3) (4).

brothel elsewhere (*b*), or (2) procures or attempts to procure a woman to leave her usual place of abode in the United Kingdom (such place not being a brothel) with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the King's dominions (*c*)

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The punishment for such offence is imprisonment with or without hard labour for not more than two years (*d*)

No one can be convicted of any such offence upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused (*e*)

**1099** Any person is by statute (*f*) guilty of a misdemeanour who detains a woman against her will (1) in any premises with intent that she may be unlawfully and carnally known by any man, or (2) in any brothel

Detaining  
woman in a  
brothel

The punishment for this offence is imprisonment with or without hard labour for two years (*g*)

**1100** Where a woman is upon any premises for the purpose of having any unlawful carnal connection or is in any brothel, a person is deemed to detain her there, if with intent to induce her to remain in such premises or in the brothel he withholds from her any wearing apparel or other property belonging to her, or threatens her with legal proceedings, if she takes away with her any wearing apparel lent to her (*h*)

Meaning of  
"detain"

**1101** Anyone is guilty of a misdemeanour at common law who conspires together with one person or more to procure a woman for the purpose of prostitution, or to seduce her or cause her to be seduced (*i*)

Conspiring to  
seduce a  
woman

It is unnecessary to allege or prove that such woman had been previously chaste (*j*)

(11) *Unlicensed Places of Entertainment*

**1102** Any house, room, garden or other place kept for public dancing, music, or other public entertainment of the like kind in the

Unlicensed  
house etc  
for public  
dancing

(*b*) Criminal Law Amendment Act 1855 (48 & 49 Vict c 69), s 2 (3)

(*c*) *Ibid.*, s 2 (4)

(*d*) *Ibid.*, s 2 No indictment under the Criminal Law Amendment Act, 1855 (48 & 49 Vict c 69), is triable at quarter sessions (*ibid.*, s 17)

(*e*) *Ibid.*, s 2 As to offences against women and girls, see p 611, *post*

(*f*) Criminal Law Amendment Act, 1855 (48 & 49 Vict c 69), s 8

(*g*) *Ibid.*

(*h*) *Ibid.* A justice of the peace may, upon a sworn information being laid issue a search warrant for any woman or girl alleged to be unlawfully detained for immoral purposes (*ibid.*, s 10) The search warrant, being a judicial act, will protect the person who laid the information from an action, if he has acted in good faith and has stated the facts fairly to the justice (*Hope v Loved* (1886), 17 Q B D 338, *Lee v Charrington* (1889), 23 Q B D 45, affirmed, *ibid.*, 272, C A)

(*i*) *R v Grey (Lord)* (1682), 9 State Tr 127, *R v Meurs* (1751) 2 Den 79, *R v Delaval* (1763), 3 Burr 1434, *R v Howell* (1864), 4 L R 160 In all these cases the woman was under the age of twenty one In *R v Delaval* (*supra*, at p 1438) Lord MANSFIELD, C J stated that he remembered a case in the Court of Chancery wherein it appeared that a man had formally assigned his

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**Morality**

cities of London and Westminster, or within twenty miles thereof (*k*), without a licence from the county council (*l*) is to be deemed a disorderly house or place, and every person keeping it without such licence may be indicted as the law directs in the case of disorderly houses (*m*)

Theatres and other places licensed by the Crown or by the Lord Chamberlain are excepted from these provisions (*n*)

It is immaterial that the entertainment is respectable and the company attending it is well behaved and that no actual nuisance is occasioned (*o*)

To render the occupier of the house liable the entertainment must be of a public nature, open to any person who chooses to go there, whether upon payment or gratuitously (*p*) The incidental or isolated use for music or dancing of a room which is not licensed is not a keeping of the room or house for that purpose within the meaning of the Disorderly Houses Act, 1751 (*a*) If dancing or music is an essential or integral part of the entertainment and forms an independent attraction, the house falls within the Act, but it is otherwise, if dancing or music is merely subsidiary to a general performance not within the Act (*b*)

**Houses used**  
**for public**  
**entertain-**  
**ment on**  
**Sunday**

**1103** Every house, room, or other place which is used for public entertainment or amusement, or for publicly debating on any subject whatever, upon any part of Sunday, and to which persons

wife over to another man and that Lord Hardwicke directed a prosecution for that transaction as being notoriously and grossly against public decency and good manners See now Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69)

(A) This, however, does not include any place within the administrative county of Middlesex, which county has a special Act, the Music and Dancing Licences (Middlesex) Act, 1891 (57 & 58 Vict c 10). By s 2 (5) of this Act any place used for public dancing singing, music or other public entertainment of the like kind and unlicensed by the county council is to be deemed a disorderly house, and the occupier is liable to a fine of £5 for every day during which it is so used S 2 (12) repeals the Disorderly Houses Act, 1751 (25 Geo 2, c 36), ss 2 3, so far as relates to the administrative county of Middlesex

(f) Local Government Act, 1888 (51 & 52 Vict c 41), s 3 (1)

(m) Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 2 Such person also forfeits £100 to anyone who may sue for it (*ibid*) A penalty of £100 can only be recovered once, although the house may be kept open for several days, but the offender, although he pays the penalty is still liable to be indicted for keeping a disorderly house (*Tarlett v Messenger* (1867), L R 2 C P 583, 585), and the recovery of a judgment for the penalty by a nominal plaintiff in collusion with the defendant is no bar to a subsequent action (*stat* (1489) 4 Hen 7, c 20. *Gardstone v Brighton Aquarium Co* (1878), 3 Ex D 137, (1879) 4 Ex D 107, C A)

(n) *Ibid* s 4

(o) *Green v Botheroyd* (1828), 3 C & P 471

(p) *Clark v Searle* (1793), 1 Esp 25, *Bellis v Burghall* (1799), 2 Esp 722, *Archer v Wallingrize* (1802), 4 Esp 186, *Marks v Benjamin* (1839), 5 M & W 563, 569

(a) 25 Geo 2, c 36, *Shutt v. Lewis* (1804), 5 Esp 128, *Marks v Benjamin*, *supra*, at pp 567, 569, *Syers v. Conquest* (1873), 28 L T, 402

(b) *Gregory v Tavevior* (1833), 6 C & P 280, *Quaglin v Matthews* (1865), 6 B & S 474, 483, *B. v Tucker* (1877), 2 Q. B D 417, 421, C C R, and see *Hall v. Green* (1853), 9 Exch 247.

are admitted by the payment of money, or by tickets sold for money, is to be deemed a disorderly house, and its keeper may be indicted as the law directs in the case of a disorderly house (c).

Sub-SECT 5—*Gaming Houses*

**1104** Everyone who keeps a common gaming house is guilty of a misdemeanour as a nuisance at common law (d). Offences, however, with regard to the keeping of such houses are more usually dealt with under the statutes passed for their suppression.

A common gaming house is a house or place kept or used for playing therein at any game of chance, or at any mixed game of chance and skill in which (1) a bank is kept by one or more of the players exclusively of the others, or (2) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed or against whom the other players stake, play, or bet (e).

Any person who appears or acts as the master or as the person having the care, government, or management of any gaming house, is deemed to be the keeper thereof, and is liable to prosecution as such, although he is not in fact the real owner or keeper (f).

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houses.

(c) Sunday Observance Act 1780 (21 Geo 3, c 49), s 1. The keeper also forfeits £200 for every day that the place is used as above mentioned to anyone who may sue for it (*ibid*). As to the effect of a judgment in a collusive action under this statute, see *Gudstone v Brighton Aquarium Co* (1878), 3 Ex D 117, 4 Ex D 107, C A. By the Remission of Penalties Act, 1871 (38 & 39 Vict c 40), the Crown is empowered to mitigate in whole or in part any penalty, fine or forfeiture imposed or recovered under the Sunday Observance Act, 1780, whether on indictment, summary conviction, or by action. The Sunday Observance Act, 1780, does not apply to a place duly registered for public worship in which no music but sacred music is performed, and where instructive discourses are delivered, even though payment is required for admission to reserved seats (*Barter v Langley* (1861), 38 L J (M C) 1). The Brighton Aquarium was held to be a place of entertainment and amusement within the meaning of this statute (*Terry v Brighton Aquarium Co* (1875), L R 10 Q B 306), even after music was discontinued and the reading room closed on Sundays (*Warner v Brighton Aquarium Co* (1875), L R 10 Exch 291). As to who is a "keeper" of the house within the meaning of the Act see *Reid v Wilson*, [1895] 1 Q B 315, C A., *Martin v Benjamin*, [1907] 1 K B 64.

(d) 1 Hawk P C, c 32, s 6. See title GAMING AND WAGLING.

(e) *Jenks v Turpin* (1864), 13 Q B D 505, per A L SMITH, J., at p 510. Another definition given by HAWKINS, J., in the same case at p 516 is a house in which a large number of persons are invited habitually to congregate for the purpose of gaming, see also Gaming Act, 1845 (8 & 9 Vict c 109), s 2.

(f) Disorderly Houses Act, 1751 (25 Geo 2, c 36), s 8. The statutory provisions are much more extensive than the common law remedy (Gaming Houses Act, 1854 (17 & 18 Vict c 38), s 4. see also Gaming Act, 1845 (8 & 9 Vict c 109), s 4). Any person being the owner or occupier or having the use of any house, room, or place who opens, keeps, or uses it for the purpose of unlawful gaming, or wilfully permits it so to be opened or used by any other person, and any person having the care or management of or in any manner assisting in conducting the business of such a house, and any person advancing money for the purpose of gaming with persons frequenting the same, may on summary conviction be fined £500 and be committed to prison for twelve months. The defendant may elect to be tried on indictment (Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 17), and he must be informed of his right to be so tried, see *R v Beeby* (1909), 25 T L R 337.

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It is not necessary to prove that any person found playing was then playing for any money. The fact that cards or other instruments of gaming are on the suspected premises is *prima facie* evidence that the house was being used as a common gaming house, and that the persons found in the room or place where the instruments of gaming were found were playing there (*g*).

Gaming is not in itself unlawful at common law (*h*), but the fact that it is habitually carried on in a house kept for the purpose of gaming is strong evidence that the house is a common gaming house (*i*).

**Unlawful**  
**games**

Unlawful gaming is either playing at any unlawful game or playing at any game in a common gaming house (*j*).

Unlawful games are ace of hearts, pharaoh (or faro), basset and hazard (*k*), passage, and every other game played with dice (except backgammon) (*l*), roulette (*m*), baccarat, and every game of cards which is not a game of mere skill, and probably every other game of mere chance (*n*).

All gaming, even at lawful games, if carried on at a common gaming house, is unlawful, and the keeper of the house is indictable (*o*).

**Clubs etc**  
**used for**  
**gaming**

**1105** The occupier of the house and, in the case of a club, the members of the committee, if any, are liable to the penalties imposed by the Gaming Houses Act, 1854 (*p*), as having the care or management or assisting in conducting the business of the house. Ordinary players are not so liable, even if they take turns at keeping a bank (*q*), but a player who has bought the bank for the evening is a person assisting in the management (*r*).

A club which is kept for purposes of gaming, but at which only members are allowed to play, is none the less a common gaming house (*s*), but the occupier of a house in which gaming between friends is occasionally carried on cannot be said to use the house for gaming, and is not therefore indictable (*a*).

(*g*) Gaming Act, 1845 (8 & 9 Vict c 109), ss 5, 8. As to the power of the police to search suspected places in the metropolis, see ss 6, 7. The instruments of gaming may be ordered to be destroyed (*ibid*, s 8).

(*h*) Whether it becomes so if the stakes are excessive appears to be somewhat doubtful, see *R v Roquer* (1823), 2 Dow & Ry (k. b.) 431, 434, 436, and the observations of HAWKINS and SMITH, JJ, on that case in *Jenks v. Turpin* (1884), 13 Q. B. D. 505, at pp 525, 532.

(*i*) *Jenks v Turpin*, *supra*, at p 525.

(*j*) *Jenks v Turpin*, *supra*.

(*k*) Gaming Act, 1735 (12 Geo 2, c 28).

(*l*) Gaming Act, 1739 (13 Geo 2, c 19).

(*m*) Gaming Act, 1744 (18 Geo 2 c 31).

(*n*) *Jenks v Turpin*, *supra*, at p 521. The question whether a particular game is lawful or unlawful, or whether a house is used for unlawful gaming, is for the judge, not for the jury (*R v Davies*, [1897] 2 Q. B. 199, C. C. R.).

(*o*) *Jenks v Turpin*, *supra*, at p 531.

(*p*) 17 & 19 Vict c 38, s 4, and see title CLUBS, Vol IV, p 435.

(*q*) *Jenks v Turpin*, *supra*. The players may be indicted for unlawful gaming, see stat 33 Hen 8, c 9, s 14, and *Jenks v Turpin*, *supra*, at p 526.

(*r*) *Derby v Bloomfield* (1904), 68 J. P. 391.

(*s*) *Jenks v Turpin*, *supra*.

(*a*) *R v Davies*, [1897] 2 Q. B. 199, C. C. R., see also *Luckwood v Cooper* (1903), 72 L. J. (k. b.) 690.

To constitute the offence of keeping a common gaming house it is not necessary that the place should be principally used for the purpose of gaming. It is sufficient that gaming is shown to be habitually carried on there (b).

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#### SUB-SECT 6—Lotteries

**1106** A lottery is a distribution of prizes by lot or chance (c). To constitute a lottery the matter must depend entirely upon chance. If there is an element of skill, then the scheme is not a lottery, although the result may depend largely on chance (d).

All lotteries are declared by statute to be common and public nuisances (e), and the persons engaged in keeping them are guilty of misdemeanour, and are punishable on indictment with fine and imprisonment without hard labour (f).

Lotteries.

(b) In *Friedling v Turner*, [1903] 1 K B 867, a confectioner had in his shop an automatic machine, a person who put a penny into a slot in the machine might, on pulling a knob, by chance obtain either a ticket entitling him to sweets or nothing at all, it was held that the shop-keeper used his shop for the purpose of unlawful gaming within s 4 of the Gaming Houses Act, 1854 (17 & 18 Vict c 38), see also *Thompson v Mason* (1904), 68 J P 270, and *Jenks v Turpin* (1884), 13 Q B D 505.

(c) *Taylor v Smetten* (1883), 11 Q B D 207, 210.

(d) *Hall v Cox*, [1899] 1 Q B 198, C A., see also *Caminada v Hulton* (1891), 60 L J (M C) 116. *Stoddart v Sugar*, [1895] 2 Q B 474. The following have been held to be lotteries—Sales of goods with tickets for prizes of varying values (*R v Harris* (1866), 10 Cox, O C 352, *Taylor v Smetten*, *supra*), free distribution by newspaper proprietors of medals bearing prize-winning numbers (*Willis v Young and Stenbridge*, [1907] 1 K B 448), "spot" competition in a newspaper (*Hall v McWilliam* (1901), 20 Cox, C C 31), "missing word" competition (*Barclay v Pearson*, [1893] 2 Ch 154), distribution of prizes at an entertainment to occupiers of particular seats (*Morris v Blackman* (1864), 2 H & C 912), a sweepstakes, whether the organiser derives profit from it or not (*Allport v Nutt* (1815), 1 C B 974, 984, *Gatty v Funnell* (1816), 9 Q B 431, *Mearns v Hellings* (1845), 14 M & W 711, *R v Crawshaw* (1860), 8 Cox, C C 375, *Hardwick v Tane*, [1904] 1 K B 201, and see *R v Hobbs*, [1894] 2 Q B 647, O C R). The following have been held not to be lotteries—Issue of prize coupons for the selection of winners of horse races (*Caminada v Hulton* (1891), 60 L J (M C) 116, *Stoddart v Sugar*, [1895] 2 Q B 474), offer of prize for correct prediction of numbers of births and deaths in London in a given week (*Hall v Cox*, [1899] 1 Q B 198, C A). See also p 550, *post*.

(e) Stat (1698) 10 Will 3, c 23, s 1.

(f) *R v Crawshaw* (1860), 8 Cox, C C 375. By the Act of William III, *supra*, the keeper of a lottery and the players are also liable to penalties of £500 and £20 respectively, to be recovered by action, see also as to such penalties, *Lotteries Act*, 1721 (8 Geo 1, c 2), ss 36, 37, *Gaming Act*, 1738 (12 Geo 2, c 28), s 1. It is also provided by statute that every person who publicly or privately keeps any office or place for carrying on any lottery not authorised by Parliament is to be deemed a rogue and vagabond, and is punishable as such. It is in this way that persons who hold lotteries are now usually dealt with (*Gaming Act*, 1802 (42 Geo 3, c 119), ss 1, 2). The only lotteries now authorised by Parliament are those which may be carried on for the encouragement of the fine arts by art unions which may have been incorporated by royal charter or constituted under a deed and rules approved by the Privy Council (*Art Unions Act*, 1846 (9 & 10 Vict c 48)). As for other statutory provisions as to lotteries, see *Lotteries Act*, 1710 (9 Ann c 6), s 57, *Lotteries Act*, 1721 (8 Geo 1, c 2), ss 36, 37, *Lotteries Act*, 1722 (9 Geo 1, c 19), s 4, *Lotteries Act*, 1732 (6 Geo 2, c 35), s 29, *Gaming Act*, 1738 (12 Geo 2, c 28), ss 3, 4, *Gaming Act*, 1802 (42 Geo 3, c 119), ss 1—7, *Lotteries Act*, 1806 (46 Geo 3, c 145), s 34, *Lotteries Act*, 1823 (4 Geo 4, c 60). 19, 37—39, 41, 59, 60—67, *Lotteries*

**SECT 8**  
**Offences**  
**against**  
**Decency**  
**and**  
**Morality.**

A person cannot be convicted of keeping a place for the purpose of a lottery (g) in which on an isolated occasion tickets are drawn for a lottery (h)

A person who incites another to the keeping of a lottery, and knowingly supplies instruments or goods for that purpose, is punishable as an aider and abettor (i)

**SUB-SECT 7 — Betting Houses**

**Betting**

**Betting**  
**houses etc**

**1107** Betting is not in itself illegal (j), nor does it appear that a house established for carrying on a betting business is indictable at common law, unless it is so conducted as to be in fact a nuisance to the public. It is, however, provided by statute (k) that no house, office, room, or other place may be opened, kept, or used (l) for the purpose of the owner, occupier, or keeper thereof, or any person using the same or employed by or acting for or on behalf of such owner, etc., or of any person having the care or management or in any manner conducting the business, betting with persons resorting thereto, or (2) for the purpose of any money or valuable thing being received by such owner or other person as the consideration for any promise, express or implied, to pay money on the event of any horse race, or other race, fight, game, sport, or exercise, or to secure such payment by any other person.

Every house, office, room, or other place so kept or used is declared to be a common nuisance and (l) a common gaming house within the meaning of the Gaming Act, 1845 (m)

Act, 1836 (6 & 7 Will 4, c 66), s 1, Lotteries Act, 1845 (5 & 9 Vict c 74), ss 3, 4. Penalties recoverable by summary proceedings are imposed on those who advertise or publish any proposal for a lottery, or who sell tickets in a lottery, whether English or foreign (Gaming Act, 1802 (42 Geo 3, c 119), s 5, Lotteries Act, 1823 (4 Geo 4, c 60), s 41, and see Lotteries Act, 1836 (6 & 7 Will 4, c 66), s 1). There are similar provisions in the earlier Acts, as to which see *King v Smith* (1791) 4 Term Rep 411. A building society established after 25th August, 1891, is forbidden to cause or permit applicants for advances to ballot for precedence or in any way make the granting of an advance depend on any chance or lot (Building Societies Act, 1894 (57 & 58 Vict c 47), s 12). The offence of keeping a lottery is triable at quarter sessions.

(g) *I.e.*, under the Gaming Act, 1802 (42 Geo 3, c 119), s 2.

(h) *Martin v Benjamin*, [1907] 1 K B 64, but the court suggested that the defendant might possibly have been convicted for selling lottery tickets under the Lotteries Act, 1823 (4 Geo 4, c 60), s 41, or for keeping a lottery under 10 Will 3, c 23 s 2.

(i) *Barratt v Burden* (1893) 63 L J (M C) 33.

(j) See *Saxby v Fulton*, [1909] 2 K B 208, 224 227.

(k) Betting Act, 1853 (16 & 17 Vict c 119), s 1.

(l) *Ibid.*, s 2.

(m) 8 & 9 Vict c 109. Any person who, being the owner or occupier of any such house or place or a person using the same, opens or uses it for the above-mentioned purposes, and an owner or occupier who knowingly permits such use, and any person who has the care or management of or assists in conducting such a business therein, is liable to a fine of £100 or to six months' imprisonment with or without hard labour on summary conviction (Betting Act, 1853 (16 & 17 Vict c 119), s 3). As to the right of a person prosecuted summarily to be tried by a jury, see Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 17. If any such person receives any money or valuable thing as a deposit on any bet upon a horse or any other race, or any fight, game, sport, or exercise, or as the consideration for a promise to pay money on such an event, he is liable on summary conviction to a penalty of £50, or to three



Every person engaged in keeping such a house is guilty of a misdemeanour and punishable by fine and imprisonment with or without hard labour, as well as by the alternative penalties provided by statute (n).

SECT. 2.  
Offences  
against  
Decency  
and  
Morality.

1108. In order that a "place" may come within the above-mentioned provisions, it must be an ascertained place, where a man engaged in betting may, according to ordinary usage, be found by persons wishing to bet with him (o), and although it is not necessary that it should be covered in, nor that it should be actually defined by metes and bounds, there must be something definite and, for the time being, fixed, marking its situation though not necessarily showing the character of the business carried on there (p).

What is a  
"place."

months' imprisonment with or without hard labour (*ibid.*, s 4), and the deposit may be recovered back by the person paying it (s 5). The Act does not extend to a person who receives money or a valuable thing by way of stakes or deposit to be paid to the winner of any race or lawful sport, game or exercise, or to the owner of any horse engaged in a race (*ibid.*, s 6).

(n) *R v Crawshaw* (1860), 8 Cox, C C 375, Hard Labour Act, 1822 (3 Geo 4, c 114). The offence is triable at quarter sessions.

(o) *Powell v Kempton Park Race Course Co.*, [1899] 1 C 113, 196.

(p) The words "or other place" in the Betting Act, 1853 (16 & 17 Vict c 119), s 1, have given rise to a large number of cases, of which an abstract is given in this note. The following have been held to be "places" within the meaning of the section when used by persons habitually resorting there for the purpose of betting.—A stool at a racecourse covered with an unusually large and marked umbrella (*Bows v Fenwick* (1874), L R 9 C P 339, *Brown v Patch*, [1899] 1 Q B 592), a strip of ground separated from a racecourse by railings and containing temporary wooden roofless structures with desks (*Shaw v Moley* (1865), L R 3 Exch 137), a small wooden box used to stand upon in a railed inclosure on a grand stand at a racecourse (*Galloway v Murra* (1881), 8 Q B D 275, the movable box affording the only distinction between that case and *Powell v Kempton Park Race Course Co.*, *supra*), the bar room of a publichouse, if used by a bookmaker for betting, and if he does so with the knowledge and consent of the publican (*R v Pready* (1888) 17 Cox, C C 433, *Hornaby v Raggett*, [1892] 1 Q B 20, *Belton v Bush*, [1899] 2 Q B 380, *Tromans v Hodgkinson*, [1903] 1 K B 30, *R v Deavill*, [1903] 1 K B 466, C C R, *R v Simpson*, [1903] 1 K B 473 C C R), a piece of ground bounded by a hoarding and its stays, to which the defendant habitually went to bet (*Liddell v Lofthouse*, [1896] 1 Q B 295), a piece of vacant ground known as the "Pit Heap," to which the public had access (*McInaney v Hildreth*, [1897] 1 Q B 600, a case of perhaps doubtful authority, being very similar to *Hawke v Dunn* [1897] 1 Q B 579, overruled (*see infra*), this and similar doubtful cases will, however, now be met by the Street Betting Act, 1906 (6 Edw 7, c 43), s 1 (*see p 551, post*)), an archway forming a private thoroughfare (*R v Humphrey*, [1898] 1 Q B 875, C C R), a garden at the back of a house (*R v Russell* (1906), 69 J P 247, C C R), *see also Clark v Dykes* (1906) 5 F (Ot of Justiciary) 43, and *Flannagan v Hill* (1904), 7 F (Ot of Justiciary), 26.

The following have been held not to be "places" within the meaning of the section.—A clump of trees in Hyde Park under which the defendant stood daily for betting (*Doggett v Catterns* (1865), 19 C B (N S) 765, Ex Ch, *see now the Street Betting Act*, 1906 (6 Edw 7, c 43), s 1), a reserved portion of a field where dog races were being held, defendant having no stand or distinguishing mark (*Snow v Hill* (1885), 14 Q B D 588), a bar-room of a publichouse to which the defendant went on only three successive days for betting purposes (*Whitehurst v Fincher* (1890), 62 L T 433, *see the observations of MATHEW, J.*, on this case in *Hornaby v Raggett*, *supra*), a railed inclosure at a racecourse to which the defendant and many other bookmakers and others resorted to bet, but used no stand or distinguishing umbrella (*Powell v Kempton Park Race Course Co.*, *supra*, at p 197, expressly overruling *Eastwood v Miller* (1874), L R 9 Q B 440, *Haigh v Sheffield*

**SECT. 8.  
Offences  
against  
Decency  
and  
Morality.**

**Clubs  
Newspaper  
coupons.**

A *bonâ fide* club, even though it may be intended that betting should be carried on in the club house between the members, but not with non-members, is not a house used for betting within the meaning of the above-mentioned provisions (q). But it is otherwise if the club consists partly of bookmakers and partly of members who go there to bet with such bookmakers and not with each other indiscriminately (r).

The office of a newspaper in which coupons are published entitling the purchasers of the newspaper to a prize for guessing the winners of a future horse race or game is a betting house within the meaning of the above-mentioned provisions, inasmuch as the newspaper proprietor undertakes to pay money on the event of such horse race or game (s).

**Receiving  
money**

**1109** To constitute a betting house it is not necessary that the money or bet should be received at such house, nor even within the United Kingdom, it is sufficient that the house is used for carrying on an essential part of the operations resulting in the payment of the money either there or elsewhere (t).

**What is  
keeping a  
house for  
the purpose  
of betting**

**1110** Keeping a house for the purpose of betting with persons resorting thereto and keeping a house for the purpose of receiving deposits on bets are two distinct offences (a). To support a charge of the first kind it is necessary to show that persons resorted to the house in person to bet. Evidence that betting was done by letters received there is insufficient, but it is not necessary to show that the persons resorting to the house paid or received bets there (b). Nor is a house or place a betting house, if it is only used for paying bets which have been made elsewhere (c).

But if the charge is that the house was kept for the purpose of receiving deposits on bets as the consideration of a promise to pay on a future event, or in other words for ready-money betting, evidence that such deposits were paid by letter is sufficient without proof of personal resort (d).

A house used for organising a sweepstakes is not a betting house within the meaning of the above-mentioned provisions (e).

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*Town Council* (1874), L R 10 Q B 102, (in which, it may be observed, the bookmakers stood on chairs or stools), and *Hawke v Dunn* [1897] 1 Q B 579, see also *Wright v Smith* (1903), 6 F (Ct of Justiciary) 18.

(q) *Downes v Johnson*, [1895] 2 Q B 203.

(r) *R v Corrie* (1904), 68 J P 294, C O R.

(s) *R v Stoddart* [1901] 1 K B 177, *Mackenzie v Hawke*, [1902] 2 K B 216, *Lennox v Stoddart*, [1902] 2 K B 21, C A, *Hawke v Hulton* (1905), 22 T L R 169.

(t) *Stoddart v Hawke*, [1902] 1 K B 353, *Lennox v Stoddart*, *supra*, and see *R v Stoddart* (1909), 25 T L R 612, C O A.

(a) *Bond v Plumb*, [1894] 1 Q B 169.

(b) *Ibid.*, *Davis v Stephenson* (1890), 24 Q B D 529, *R v Brown*, [1895] 1 Q B 119, C O R., *R v Worton*, [1895] 1 Q B 227, C O R.

(c) *Bradford v Dawson*, [1897] 1 Q B 307, see now the Street Betting Act, 1906 (6 Edw 7, c 43).

(d) *R v Stoddart*, [1901] 1 K B 177, see also the other authorities mentioned in notes (s) and (t), *supra*.

(e) *R v Hobbs*, [1898] 2 Q B 647, C O R., but the sweepstakes is a lottery (see p. 547, note (d), *ante*).

SUB-SECT 8—*Betting in Streets.*

SECT. 3.  
Offences  
against  
Decency  
and  
Morality.

Street  
betting

1111 Everyone is by statute (f) guilty of an indictable misdemeanour who frequents or loiters in streets or public places on behalf either of himself or of any other person for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager, paying or receiving or settling bets, if such person has been twice previously summarily convicted (g)

The punishment for this offence on conviction on indictment is a fine of £50, or imprisonment with or without hard labour for six months without the option of a fine (h)

It is an offence punishable on summary conviction by a fine of £30, or imprisonment with or without hard labour, for two months to exhibit or publish any placard, handbill, card, writing, sign, or advertisement whereby it is made to appear that any house or place is kept or used for the purpose of making bets or wagers, or for exhibiting betting lists, or with intent to induce any person to resort there for the purpose of making bets or wagers, or to invite on behalf of the owner or occupier other persons to resort there to make bets (Betting Act, 1853 (16 & 17 Vict c 119), s 7, see *Hawke v Mackenzie* (Nos 1 and 2), [1902] 2 K B 225, *Ashley and Smith, Ltd v Hawke* (1903), 67 J P 361), it is also an offence punishable in the same way for any person to send, exhibit, or publish any letter, circular, telegram, placard, handbill, card or advertisement whereby it is made to appear that any person, either within or without the kingdom, will give information or advice for the purpose of or with respect to any bet or wager or any such event or contingency as is mentioned in the Betting Act, 1853 (16 & 17 Vict c 119), or will make on behalf of any other person any such bet or wager as is mentioned in that Act, it is also an offence punishable in the same way to send etc such letter etc with intent to induce any person to apply to any house etc with the view of obtaining information or advice for the purpose of any such bet etc, or to send such letter etc inviting any person to make or take any share in or in connection with such bet etc (Betting Act, 1874 (37 & 38 Vict c 15), s 3, see *Hawke v Mackenzie, supra* This Act only applies to advertisements to give information or advice as to bets to be made in a betting house (*Cox v Andrews* (1883), 12 Q B D 146)) A justice of the peace, upon complaint on oath being made before him may issue a search warrant authorising a constable to search any premises suspected of being used as a betting house, and all persons found therein and all cards or other documents relating to racing or betting may be brought before the justice (Betting Act, 1883 (16 & 17 Vict c 119), s 11) In the metropolis the Commissioner of Police may authorise such a search (*ibid*, s 12) The persons arrested may be bound over under stat (1541) 33 Hen 8, c 9, not to haunt such places in future (*Murphy v Arrow*, [1897] 2 Q B 527)

(f) Street Betting Act, 1906 (6 Edw 7 c 43), s 1 The offence is triable at quarter sessions

(g) The defendant is liable on a first conviction to a fine not exceeding £10 and on a second conviction to a fine not exceeding £20 (*ibid*)

(h) On summary conviction for the third offence the punishment is a fine of £30, or imprisonment with or without hard labour for three months (*ibid*.) For the purposes of this section "street" includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, and "public place" includes any public park, garden, or sea beach, and any uninclosed ground to which the public for the time being have unrestricted access, and every inclosed place (not being a public park or garden) to which the public have a restricted right of access, whether on payment or otherwise, if at every public entrance there is conspicuously exhibited by the owner or person having control of the place a notice prohibiting betting therein (*ibid*, s 1 (4)) Nothing contained in the Act applies to any ground used for the purpose of a racecourse or ground adjacent thereto on the days on which races take place (s 2) As to the meaning of loitering, see *Dunning v Sweetman* (1909), 26 T. L. R. 302

## SECT 9

Offences  
against  
Decency  
and  
MoralityInviting  
infants to  
bet or borrow  
money.SUB-SECT 9—*Inviting Minors to Bet etc*

**1112** Everyone is by statute (i) guilty of a misdemeanour who, for the purpose of earning commission, interest, or reward, or other profit, sends to a person whom he knows to be an infant any circular, advertisement, letter, or other document which invites, or may reasonably be implied to invite, the person receiving it to make any bet or wager, or to take any share or interest in a betting or wagering transaction, or to apply to any person or at any place for information or advice for the purpose of any bet or wager, or for information as to any race, fight, game, sport or other contingency upon which betting is generally carried on, or which invites him to borrow money or to apply to any person or at any place for information or advice as to borrowing money

The punishment for this offence is imprisonment for three months with or without hard labour or a fine of £100 or both (k)

If any such document is sent to any infant at any college, school, or other place of education the person sending or causing the document to be sent is to be deemed to have known that the person to whom it was sent was an infant, unless the sender proves that he had reasonable ground for believing the person to whom the document was sent to be of full age (l)

The same penalties are imposed upon a person who without the authority of a court solicits an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan (m).

SUB-SECT 10—*Offences relating to Burial or Cremation*Failure to  
bury.

**1113** The person upon whom the duty of disposing of a dead body falls (a) is guilty of a common law misdemeanour, which is punishable by fine or imprisonment, if, having the means, he fails to discharge such duty (b)

Preventing  
burial etc.

**1114** It is a misdemeanour at common law either to prevent a body from being buried (c), or to disinter it without lawful authority (d), whether for dissection or otherwise (e), or for an

(i) Betting and Loans (Infants) Act, 1892 (55 Vict c 4), ss 1, 2

(k) *Ibid* Upon summary conviction the punishment is imprisonment with or without hard labour for one month or to a fine of £20 or both

(l) *Ibid*, s 3

(m) *Ibid*, s. 4 (these offences are triable at quarter sessions), see also title MONEY AND MONEY LENDERS

(a) See title BURIAL AND CREMATION, Vol III, p 405

(b) *R v Vann* (1851), 2 Den 325, *R v Stewart* (1840), 12 Ad & El 773, 778 See also *Jenkins v Tucker* (1788), 1 Hy BL 90, *Ambrose v Kerrison* (1851), 20 L J (Q. P.) 135

(c) It is a common law misdemeanour to detain a dead body, as, e.g., upon a supposed claim for fees or a debt, and to refuse to deliver it to the executor or to bury it against his directions (*R v Scott* (1842), 2 Q. B 248, n.) See *Williams v Williams* (1882), 20 Oh D 659

(d) *R. v Gilles* (1818), Russ & Ry 366, n, *R v Lynn* (1788), 2 Term Rep 733, *R. v. Feast* (1858), Dears & B 590, 598 As to the right of the personal representatives of the deceased to permit an anatomical examination of the body, see Anatomy Act, 1832 (2 & 3 Will 4, c 75), ss 7, 14, see also title MEDICINE AND PHARMACY

(e) *R. v. Cundick* (1822), 1 Dow & Ry (M C) 356.

undertaker to whom a body is intrusted for burial to sell it for dissection (*f*)

**SECT. 3.**  
**Offences**  
**against**  
**Decency**  
**and**  
**Morality.**

Where disinterment has taken place without authority, it is no defence that it was done from a pious and laudable motive (*g*), or that the human remains were not disturbed or removed in an indecent and improper manner (*h*)

**1115** It is a misdemeanour to expose a dead body near the public highway where it may be seen by passers-by and in such a way as to shock public decency (*i*)

**Exposing**  
**dead body.**

The punishment for the three last-mentioned misdemeanours is fine and imprisonment without hard labour (*k*)

**1116** It is not in itself an offence against the law to burn a dead body provided that this is done decently and in such a way as not to cause a nuisance to persons passing along public roads or other places where they have a right to go (*l*).

**Burning dead**  
**body**

Everyone is by statute (*m*) guilty of a misdemeanour who wilfully makes a false declaration or representation or signs or utters any false certificate with a view to procuring the burning of any human remains.

**Cremation**  
**Act, 1902.**

The punishment for this offence, in addition to any penalty which the offender may otherwise incur, is imprisonment with or without hard labour for two years (*a*)

Everyone is by statute (*b*) guilty of a misdemeanour who, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body or makes any declaration or certificate under the Cremation Act, 1902 (*c*)

The punishment for this offence on conviction on indictment is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

#### SUP-SECT. 11.—*Drunkenness*

**1117** Drunkenness in some circumstances is punishable by fine on summary conviction (*e*) There are, however, certain statutory

**Punishment**  
**of habitual**  
**drunkard.**

(*f*) *R v Sharpe* (1857), Dears & B 160

(*g*) *R v Jacobson* (1880), 14 Cox, C C 522

(*h*) As to authorising disinterment, see title BURIAL AND CREMATION, Vol III, p 553

(*i*) *R v Clark* (1833), 15 Cox, C C 171

(*k*) These offences are triable at quarter sessions

(*l*) *R v Price* (1883), 12 Q. B. D 247, 256 Or unless it is done in such a way as to infringe the provisions of the Cremation Act, 1902 (2 Edw 7, c 8), for which see title BURIAL AND CREMATION, Vol III, p 576

(*m*) Cremation Act, 1902 (2 Edw 7, c 8), s 6 (2)

(*a*) *Ibid*

(*b*) *Ibid*, s 8 (3).

(*c*) *Ibid*, s 8 (3)

(*d*) *Ibid* These offences under the Cremation Act, 1902 (2 Edw 7, c 8), are, it seems, triable at quarter sessions

(*e*) Licensing Act, 1872 (35 & 36 Vict c 94), s 12, Licensing Act, 1902 (2 Edw 7, c 28), s 1, see title INTOXICATING LIQUORS

**SECT. 3**  
**Offences**  
**against**  
**Decency**  
**and**  
**Morality.**

**Indictment.**

provisions which enable a criminal habitual drunkard to be dealt with on indictment (*f*)

The indictment, after charging the offence, must state that the accused is a habitual drunkard. He is in the first instance arraigned for the offence, and if he pleads or is found guilty of the offence, the jury are to be charged to inquire whether he is a habitual drunkard. Unless evidence that the defendant is a habitual drunkard has been given before he is committed for trial, not less than seven days' notice must be given to the proper officer of the court by which he is to be tried that it is intended to charge habitual drunkenness in the indictment (*g*).

**Sentence of**  
**detention.**

**1118** A person who commits any of the offences mentioned in the First Schedule to the Inebriates Act, 1898 (*h*), and who within the twelve months previous to such commission has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, is liable on conviction on indictment (or, if he consents to be so dealt with, on summary conviction) to be detained in any certified inebriate reformatory for three years, but he cannot be sentenced to imprisonment in addition to detention (*i*). The offender must be informed that he has a right to be tried on indictment (*k*).

If a person convicted is over sixty years of age, and is liable to have a detention order under the Inebriates Act, 1898 (*l*), made against him, the court may, if they think fit, order him to be disqualified for a statutory old age pension for such period not exceeding ten years, as the court may direct (*m*).

**SECT. 4 — Offences affecting Public Health, Safety, and Convenience.**

**SUB-SECT. 1 — Unwholesome Provisions**

**ng etc**  
**unwholesome**  
**provisions.**

**1119** Everyone is guilty of a misdemeanour at common law (*n*) who knowingly exposes or sells in the way of his trade, or sends or brings to market or has in his possession with intent to sell for human food, articles of food or drink which are corrupt and unfit and dangerous for human food (*o*). Proceedings for

(*f*) See p 417, *ante*

(*g*) Inebriates Act, 1898 (61 & 62 Vict. c. 60) s. 1. See *R v Prince* (1908), 1 Cr App Rep 252.

(*h*) 61 & 62 Vict. c. 60. Namely being found drunk in a highway or public place or on licensed premises, being guilty while drunk of riotous or disorderly behaviour in a highway or public place, being drunk while in charge of a carriage, horse, cattle or steam engine, or when in possession of loaded fire-arms refusing to quit licensed premises when drunk, when drunk persisting in entering or in refusing to leave a passenger steamer.

(*i*) Inebriates Act 1898 (61 & 62 Vict. c. 60) s. 2 (1), *Commissioner of Police v Donohoe* [1903] 1 K B 895, *R v Briggs*, [1909] 1 K B 381, C C A.

(*k*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2, Summary Jurisdiction Act 1879 (42 & 43 Vict. c. 49), s. 17. As to escape from inebriate reformatories, see Inebriates Act, 1898, ss. 11, 18, and the Regulations made under the Act.

(*l*) 61 & 62 Vict. c. 60.

(*m*) Old Age Pensions Act, 1908 (8 Edw. 7, c. 40), s. 3 (3).

(*n*) Or perhaps certain early statutes, see 4 Co. Inst. 261, 4 Bl. Com. 162.

(*o*) 4 Co. Inst. 261, *R v. Dixon* (1814), 3 M. & S. 11, *R v. Stevenson* (1862),

offences of this nature are, however, more commonly taken under the Public Health Act, 1875 (*p*), or the Sale of Food and Drugs Acts, 1875 and 1899 (*a*)

The punishment for this offence is fine and imprisonment with or without hard labour (*b*)

**1120** Everyone is by statute (*c*) guilty of a misdemeanour who, after a previous summary conviction for the like offence, knowingly mixes, colours, stains, or powders any article of food with any ingredient or material so as to render it injurious to health, with intent that it may be sold in that state, or to sell it so mixed or coloured

The punishment for this offence is imprisonment with or without hard labour for six months (*d*)

**1121** Many nuisances which affect the public generally are indictable. Offences of this character are dealt with in other parts of this work (*e*)

#### SUB-SECTION 2—Offences by Innkeepers

**1122** The keeper of an inn may by the common law be indicted and fined for a misdemeanour, as being guilty of a public nuisance, if he usually harbours thieves or persons of scandalous reputation, or suffers frequent disorders in his house (*f*)

SECT. 4.  
Offences  
affecting  
Public  
Health  
etc.

Injurious  
foods.

Nuisances.

Offences by  
innkeepers.

3 F & F 106, *R v Jarvis* (1862) 3 F & F 108, *R v Crawley* (1862), 3 F & F 109, *Furnby v Bollett* (1817), 16 M & W 644, 651, *Shillito v. Thompson* (1870) 1 Q B D 12

(*p*) 38 & 39 Vict c 55. See title PUBLIC HEALTH ETC

(*a*) 38 & 39 Vict c 63 and 62 & 63 Vict c 51. By the Public Health Act, 1875 (38 & 39 Vict c 55), ss 116, 117, if any animal carcass, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, is exposed for sale or deposited in any place for the purpose of sale or of preparation for sale and intended for the use of man, and appears to a medical officer of health or an inspector of nuisances to be diseased, unsound, unwholesome, or unfit for the food of man, such medical officer etc. may seize and carry away the same in order to have it dealt with by a justice, a justice may order the same to be destroyed, and the person to whom it belonged or in whose possession or on whose premises it was found is liable to a penalty of £20, or without the infliction of a fine to imprisonment for three months. See title FOOD AND DRUGS.

(*b*) See Criminal Procedure Act 1851 (14 & 15 Vict c 100) s 29, 2 Russell on Crimes, 15, 2 1st P C 822

(*c*) Sale of Food and Drugs Act, 1875 (38 & 39 Vict c 63), ss 3, 5, 8

(*d*) *Ibid*. The punishment for a first offence, upon summary conviction, is a fine of £50. By s 4 similar penalties are imposed for knowingly mixing ingredients with drugs so as to affect injuriously their quality or potency. "Food" in the Food and Drugs Acts includes every article used for food or drink by man other than drugs or water, and also includes flavouring matters and condiments (Sale of Food and Drugs Act, 1899 (62 & 63 Vict c 51), s 26). The accused is not liable to be convicted, if he shows to the satisfaction of the court that he did not know of the adulteration of the article of food or drug, and that he could not with reasonable diligence have obtained that knowledge (Sale of Food and Drugs Act, 1875 (38 & 39 Vict c 63), s 5). Nothing contained in the Sale of Food and Drugs Act, 1875 (38 & 39 Vict c 63) affects the power of proceeding by indictment (*ibid*, s 28). The forging or knowingly uttering for the purposes of the Act of any certificate or warrant, is a misdemeanour punishable by imprisonment for two years with hard labour (*ibid*, s 27 (1)), and see p 760, *post*. See also title FOOD AND DRUGS.

(*e*) See titles HIGHWAYS, NUISANCE, PUBLIC HEALTH

(*f*) 1 Hawk. P. C., c. 32, s. 1 (L 714), where it is also said to be indictable for

**SECT. 4**  
**Offences**  
**affecting**  
**Public**  
**Health**  
**etc.**

Refusing to  
 receive  
 travellers.

If a person who keeps a common inn (*g*) refuses either to receive a traveller as a guest into his house, or to find him reasonably suitable victuals or lodging, he is not only liable in an action for damages, but is also guilty of a misdemeanour, and may be indicted and fined (*h*).

An innkeeper is not liable for such refusal if his inn is full (*i*), or if the person applying is not a traveller (*a*), or if he is drunken, violent, quarrelsome or disorderly, or a person whose presence on the premises would subject the innkeeper to a penalty under the Licensing Act, 1872, or if the innkeeper has some other reasonable ground for his refusal (*b*).

A person who sells intoxicating liquor or other refreshments, but who is not an innkeeper, is entitled to refuse to serve persons wishing to be customers, whether they are travellers or not (*c*).

Endangering  
 railway  
 passengers.

**1123** There are various acts which are criminal when done with intent to, or which are likely to, endanger the safety of any person travelling or being upon a railway (*d*).

**SECT. 5—Offences relating to Merchant Shipping**

**SUB-SECT. 1—Leaving Seamen behind**

Leaving  
 British  
 seaman on  
 shore

**1124** Any person belonging to a British ship is by statute (*e*) guilty of a misdemeanour who (1) wrongfully forces a seaman on shore and leaves him behind, or (2) otherwise causes him to be wrongfully left behind in any place, either on shore or at sea, in or out of the King's dominions.

The punishment for this offence is a fine, or imprisonment for two years with or without hard labour (*f*).

an innkeeper to 'take exorbitant prices.' See further as to various offences by licensed victuallors, title INTOXICATING LIQUORS.

(*g*) *I.e.*, a house where a traveller is furnished with everything which he has occasion for whilst upon his way, but not necessarily stabling accommodation (*Thompson v Tacy* (1820), 3 B & Ald 281, 286). See title INNS AND INN KEEPERS.

(*h*) 1 Hawk P C, c 32 s 2 (l 714), *R v Irens* (1835) 7 C & P 213. See *R v Sprague* (1899), 63 J P 233, *R v Smith* (1901), 65 J P 521.

(*i*) *Browne v Brandt* [1902] 1 K B 696.

(*a*) *R v Rymer* (1877), 2 Q B D 136, C C R, *Lamond v Richard* [1897] 1 Q B 541, C A., where a person who was originally a traveller had ceased to be so when notice to quit was given to him.

(*b*) Licensing Act, 1872 (35 & 36 Vict c 92), s 18, and title INTOXICATING LIQUORS, *Fudgeon v Legge* (1857) 21 J P 743, *R v Ivins, supra*, *R v Rymer, supra*, where the innkeeper was held to be justified in refusing because the person applying for entertainment insisted on bringing a large dog into the house. The innkeeper is probably entitled to require security for his charges or prepayment, but if he does not do so, but refuses to entertain the traveller for some other reason than that he has no such security, he will probably be held to have waived his right to require it (see 1 Hawk P C, c 32, s 2 (l 714), *R v Irens, supra*, *Pell v Knight* (1841), 8 M & W 269).

(*c*) *R v Rymer, supra*. But if any holder of a licence to sell intoxicating liquors persistently and unreasonably refuses to supply suitable refreshment (other than intoxicating liquor) at a reasonable price this is a good ground for depriving him of his licence (Licensing Act, 1904 (4 Edw 7 c 23) s 9).

(*d*) See further as to the obstruction of and malicious injury to railways, trams, and telegraphs pp 786, 787, *post*.

(*e*) Merchant Shipping Act, 1906 (6 Edw 7, c 48), s 43.

(*f*) Merchant Shipping Act, 1894 (57 & 58 Vict c 40), s 680 (1), (*a*) (the Act of



**1125** A master of a British ship is by statute (*g*) guilty of a misdemeanour (1) who, without having obtained the sanction of the proper authority (*h*), discharges a seaman (*i*), or leaves him behind (*k*), except at a port in the country in which he was shipped, or (2) who delivers a false account (*l*) or makes a false statement (*m*) to the proper officer (*n*) as to the wages and effects of any seaman who is left behind out of the British Isles

The punishment for this offence is a fine, or imprisonment for not more than two years with or without hard labour (*o*)

SECT 5

relating to  
Merchant  
Shipping.Discharging  
seamen etcSUB-SECT 2—*Fraud in Relation to Shipping Documents*

**1126** The master or owner of a ship is by statute (*p*) guilty of a misdemeanour if he uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship

Improper  
use of  
certificate  
of registry.

1906 is an amending Act, and is to be construed as one with the Act of 1894 (s 56 (1)). Any offence declared by the Merchant Shipping Act, 1894 to be a misdemeanour, and in respect of which no specific punishment is assigned, is punishable as above stated (*ibid*, s 680). Such offences (except the offence of sending an unseaworthy ship to sea) may however, be prosecuted summarily under the Summary Jurisdiction Acts, and if so prosecuted are punishable only by imprisonment for six months (*ibid*). Offences against the Act punishable only by imprisonment for not exceeding six months, or by a fine not exceeding £100, must be prosecuted summarily (*ibid*, s 680 (1) (b)). There can be no summary conviction in any proceeding instituted in the United Kingdom unless the proceeding is commenced within six months after the offence, or, if both or either of the parties happen during that time to be out of the United Kingdom, unless it is commenced within two months after they both first arrive or are at one time within the kingdom (*ibid*, s 683, and see *Austin v Olsen* (1868), 1 R 3 Q B 208). But the defendant has, under the Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 17, a right to claim to be tried by a jury in all cases where he may on summary conviction be sentenced to more than three months' imprisonment, and he should be so informed (*R v Aldberg*, [1901] 2 K B 866). See *R v Beshy* [1909] 1 K B 849. As to venue and jurisdiction, see p 285, *ante*, as to costs, see p 445, *ante*. There are several sections in the Merchant Shipping Act, 1894, providing for fines of £500 under the Act. Such fines may be recovered by action, and the offences are not criminal, see ss 71, 447, 452, and title SHIPPING AND NAVIGATION. As to the conveyance of the offender to the United Kingdom or a British possession, see s 649, as to evidence taken abroad, see s 691. The offences under the Merchant Shipping Act, 1894, *supra* referred to in these sub-sections, are triable at quarter sessions.

(*g*) Merchant Shipping Act, 1906 (6 Edw 7, c 45), ss 28 (10), 30, 36

(*h*) The proper authority is defined *ibid*, s 49

(*i*) The sanction of the proper authority is to be indorsed on the agreement with the crew. This sanction is not to be refused where the seaman is discharged on the termination of his service (*ibid*, s 30)

(*k*) The sanction in this case takes the form of a certificate, which must state the cause for which the seaman is left behind, whether the cause be unfitness, or inability to proceed to sea, desertion, disappearance, or otherwise. No such sanction or certificate is required where the seaman is discharged in accordance with the Merchant Shipping Acts (i.e., the Merchant Shipping Acts, 1894 to 1906) (*ibid*, s 36)

(*l*) Merchant Shipping Act, 1906 (6 Edw 7, c 48), s 28 (1) (b)

(*m*) *Ibid*, s 28 (3)

(*n*) *Ibid*, s 28 (11)

(*o*) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 680, and *supra* 556, note (*f*) *ante*

(*p*) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 16

**SECT 5**  
**Offences**  
**relating to**  
**Merchant**  
**Shipping**

**Misconduct**  
**endangering**  
**ship.**

The punishment is fine or imprisonment for two years with or without hard labour (q)

**SUB-SECT 3—Misconduct of Mariners.**

**1127** Any master, seaman, or apprentice belonging to a British ship is by statute (a) guilty of a misdemeanour who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, (1) does any act tending to the immediate loss or serious damage of the ship, or tending immediately to endanger the life or limb of a person belonging to or on board of her, or (2) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss or serious damage, or for preserving any person belonging to or on board of her from immediate danger to life or limb

The punishment is by statute fine or imprisonment for not more than two years with or without hard labour (b)

The same misconduct by a pilot when in charge of a ship is also a misdemeanour (c) punishable in the same way (d)

**Taking**  
**money for**  
**apprentice-**  
**ship in the**  
**sea fishing**  
**service**

**1128** Any person is guilty of a misdemeanour (e) who receives any money or valuable consideration from the person to whom an apprentice in the sea-fishing service is bound, or to whom a sea fishing boy is bound by any agreement, or from the apprentice or boy or anyone on his behalf in consideration of his being so bound, or who makes any such payment

The punishment for this offence is a fine or imprisonment for not more than two years with or without hard labour (f)

**Failure of**  
**master to**  
**help in**  
**collision**

**1129** In every case of collision between two vessels it is the duty of the master or person in charge of each vessel, so far as he can do so without danger to his own vessel, crew and passengers, to render to the other vessel, her crew and passengers, such assistance as may be practicable and may be necessary to save them from danger caused by the collision and to stay by the other vessel until he has ascertained that she has no need of further assistance, and also to give to the master or person in charge of the other vessel

(q) Merchant Shipping Act 1894 (37 & 58 Vict c 60), s 680. Also the ship is subject to forfeiture (s 16), and see p 556 note (f), *ante*. As to forgery of documents under the Merchant Shipping Act, 1894, see p 752, *post*

(a) *Ibid*, s 220. It is not necessary to prove that the wrongful act or omission was followed by loss, destruction, or damage (*R v Gardner* (1859), 1 F & F 609)

(b) *Ibid* s 680, and see p 556, note (f), *ante*. Desertion by seamen and absence without leave are punishable summarily, the former by twelve and the latter by ten weeks' imprisonment and the forfeiture of wages (*ibid*, s 221). For a number of other offences against discipline punishable on summary conviction, see s 225, and as to misconduct by seamen serving on fishing boats, see s 376

(c) *Ibid*, s 607

(d) *Ibid*, s 680, and see p 556, note (f), *ante*

(e) Merchant Shipping Act, 1894 (37 & 58 Vict c 60), s 398. This section applies only to service in fishing boats of a tonnage of twenty-five tons and upwards, see the words prefixed to s 392 of the Act

(f) *Ibid*, s 660, and see p 556, note (f), *ante*

the name of his own vessel and of the port to which she belongs, and the names of the ports from which she comes, and to which she is bound (g)

If the master or person in charge fails to do any of the things prescribed above without reasonable cause, he is by statute (g) guilty of a misdemeanour.

The punishment is fine, or imprisonment for not more than two years with or without hard labour (h)

**1130** Any person is by statute (i) guilty of felony who unlawfully and maliciously prevents or impedes any person, being on board of or having quitted any ship or vessel in distress or wrecked, stranded, or cast on shore, in his endeavour to save his life or the life of any other person endeavouring to escape

The punishment is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (k)

**1131** Every person is by statute (l) guilty of a misdemeanour who assaults or strikes or wounds any magistrate, officer, or other person whatsoever lawfully authorised, in the exercise of his duty in the preservation of any vessel in distress or of any vessel, goods, or effects stranded or cast on shore or lying under water.

The punishment for this offence is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (m)

**1132** If any person sends or attempts to send or is party to sending or attempting to send a British ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, he is by statute (n) guilty of a misdemeanour, unless he

SECT. 8.  
Offences  
relating to  
Merchant  
Shipping.

Preventing  
escape from  
wreck.

Assaulting  
person  
engaged in  
preserving  
wrecked  
vessel

Sending  
unseaworthy  
ship to sea.

(g) Merchant Shipping Act, 1894 (57 & 58 Vict c 60) s 422 As to the application of this section to collisions with foreign vessels, see s 424 A person is "in charge" who has the control of the ship at any time when assistance could have been rendered, and not merely at the time of the collision (*Ex parte Ferguson* (1871), L R 6 Q B 280, 287) If a pilot is on board, the master is none the less the "person in charge" (*The Queen* (1869), L R 2 A & E 14, 355) Whether the principle that a tug and its tow are to be considered as one vessel will render the person in charge of the tug criminally responsible if he does not stand by his tow and a vessel with whom she has come into collision appears doubtful (see *The Hannibal*, 1867), L R 2 A & E 53)

(h) *Ibid*, s 680, and see p 506, note (f), ante

(i) Offences against the Person Act 1861 (24 & 25 Vict c 100), s 17

(k) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(l) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 37 A person who without leave of the master boards any vessel wrecked, stranded, or in distress, unless he is, or acts by command of, a receiver of wreck, is liable to a fine of £50 A person who impedes or hinders the saving of any such vessel or her cargo, or secretes any wreck or obliterates any mark thereon, or wrongfully carries away any part of the vessel or cargo, is also liable to a fine of £50 in addition to any other punishment to which he may be liable (Merchant Shipping Act (*supra*), s 536) The offence is triable at quarter sessions.

(m) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 37

(n) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 437 This section does not apply to a ship exclusively employed in trading or going from place to place in any river or inland water which is wholly or partly in a British possession (*ibid*, s 457 (3)) This offence cannot be prosecuted summarily

**SECT. 5.****Offences relating to Merchant Shipping.**

proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going in an unseaworthy state was under the circumstances reasonable and justifiable

If a master of a British ship knowingly takes the same to sea in such an unseaworthy state, he is by statute guilty of a misdemeanour (o), unless he proves that her going to sea in such a state was in the circumstances justifiable

The punishment for this offence is fine, or imprisonment for not more than two years with or without hard labour (p)

**Preventing service of documents.**

The owner or master of a ship is by statute (q) guilty of a misdemeanour, if he is party or privy to obstructing the service on the master of a ship of any document under the provisions of the Merchant Shipping Act, 1894 (a), relating to detention of unseaworthy ships. The punishment for this offence is fine, or imprisonment with or without hard labour for not more than two years (d)

A prosecution for this offence cannot (except in Scotland) be instituted without the consent of the Board of Trade or of the governor of the British possession in which the prosecution takes place (c)

**Forging salvage document etc.**

**1133** A person is by statute (d) guilty of a misdemeanour who in any proceeding under the provisions of the Merchant Shipping Act, 1894, relating to salvage by His Majesty's ships forges any document or utters it knowing it to be forged, or who gives, makes, or procures any false evidence or representation knowing it to be false

The punishment is imprisonment for two years (e)

**Disobedience to order of lighthouse authority to extinguish misleading lights.**

**1134** Whenever any fire or light is burnt or exhibited at such places and in such manner as to be liable to be mistaken for a light proceeding from a lighthouse the general lighthouse authority within whose area the place is situate may serve a notice upon the owner of the place where the fire or light is burnt or exhibited, or on the person having charge of the fire or light, directing that owner or person within a reasonable time, to be specified in the notice, to take effectual means for extinguishing or screening the fire or light and for preventing in the future any similar fire or light

**Failure to comply with notice.**

**1135** Any person upon whom such a notice is served, who fails without reasonable cause to comply with such directions, is by statute guilty of a misdemeanour and may be indicted for a common nuisance (f)

(*ibid*, s 547 (o)) The indictment need not allege that the defendant knew the ship to be unseaworthy (*R v Freeman* (1875), 91 R O L 527, C C R) As to what amounts to seaworthiness, see *Hedley v Pinkney & Sons Steamship Co*, [1894] A C 222, *The Diamond*, [1906] P 282

(e) See previous note

(p) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 680, and see p 556, note (f), *ante*

(q) *Ibid*, s 696 (2)

(a) 57 & 58 Vict c 60

(b) *Ibid*, s 680

(c) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 457 (3)

(d) *Ibid*, s. 564, and see p 754, *post*

(e) *Ibid*, or on summary conviction to imprisonment for six months

(f) *Ibid*, s 667 (3) The general lighthouse authority in England and Wales, the Channel Islands and the adjacent seas and islands, and at Gibraltar,

The punishment for this offence is imprisonment without hard labour, and a fine of £100 in addition (g).

SECT. 5.  
Offences  
relating to  
Merchant  
Shipping.

SUB-SECT. 4—*Seal Fisheries.*

**1136** Any person is by statute (h) guilty of a misdemeanour who commits, procures, aids, or abets any contravention of the Behring Sea Award Act, 1891, which statute incorporates certain provisions of the Behring Sea Arbitration Award dated the 15th August, 1893.

Offences  
against  
Behring Sea  
Award Act.

The punishment for this offence is a fine, or imprisonment with or without hard labour (i).

**1137** It is by statute (k) a misdemeanour to forge or fraudulently alter a licence or other document issued for the purpose of articles 4 or 7 of that award, or to procure any such licence or document to be forged or fraudulently altered or, knowing it to be forged or fraudulently altered, to use the same.

Forging  
Licence.

The punishment is a fine, or imprisonment with or without hard labour (l).

**1138** The King may by Order in Council prohibit during the period specified by the order the catching of seals by British ships in such parts of the North Pacific Ocean as are mentioned in the order. Any person belonging to a British ship is guilty of a

Offence  
against  
Seal Fisheries  
(North  
Pacific) Act.

is the Trinity House, throughout Scotland and the adjacent seas and islands and the Isle of Man, the Commissioners of Northern Lighthouses, throughout Ireland and the adjacent seas and islands the Commissioners of Irish Lights (Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 634)

(g) *Ibid* s 667 (3)

(h) Behring Sea Award Act, 1894 (57 Vict c 2), s 1 (2), and see Sched II. The offence is a misdemeanour "within the meaning of the Merchant Shipping Act, 1894" (17 & 18 Vict c 104), see s 51 of the last named Act and Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 745 (1) (f). The provisions of the award which are incorporated by this Act are set out verbatim in Sched I. The killing at any time of fur-seals within a zone of sixty miles round the Pribiloff Islands or elsewhere in the Pacific Ocean within certain prescribed limits, between 1st May and 31st July, is forbidden. There are other provisions as to licences for seal fishing and the method in which the fishing is to be conducted. As to the personal liability of the master of a vessel employed in the fishery for acts done by persons on board the vessel, see s 4 of the Act. S 3 enables the Sovereign to make Orders in Council for carrying into effect the provisions of the Act and award, and imposes a penalty of £100 for every breach of such an order. Orders in Council were made under this Act on 30th April, 1891, and 2nd February, 1895.

(i) Merchant Shipping Act, 1854 (17 & 18 Vict c 104), s 51 (1). If prosecuted summarily the offence is punishable with six months' imprisonment or a fine of not more than £100 (*ibid*, s 518 (2)). The ship employed in such contravention, and her equipment and everything on board, is liable to be forfeited to the Crown, but the court may release her on payment of a fine not exceeding £500 (Behring Sea Award Act, 1894 (57 Vict c 2), s 1 (2), and see Sched II).

(k) Behring Sea Award Act, 1894 (57 Vict c 2), s. 1 (4). The articles above mentioned are set out in Sched I to the Act.

(l) *Ibid*, Sched II, Merchant Shipping Act, 1854 (17 & 18 Vict c 104), s. 518. The offence may also be punished summarily by imprisonment for not exceeding six months or a penalty of £100.

**SECT. 5**  
**Offences**  
**relating to**  
**Merchant**  
**Shipping.**

misdemeanour (*m*) who (1) kills, takes or hunts, or attempts to kill or take, any seal during the period and within the seas specified in such order, or (2) uses a British ship or her equipment or crew for such a purpose.

The punishment is a fine, or imprisonment for two years with or without hard labour (*n*)

The ship and her equipment and everything on board are subject to forfeiture to the Crown (*o*)

**SECT. 6—Offences relating to Trade.**

**SUB-SECT. 1—Unlawful Combination**

**Spreading**  
**false rumour.**

**1139** The offences of engrossing, forestalling, and regrating have been abolished by statute (*p*), but everyone is still guilty of a misdemeanor (*q*) (1) who knowingly spreads or conspires to spread any false rumour with intent to enhance or decry the price of any goods or merchandise (*a*) or the price of stocks (*b*), (2) who prevents or endeavours to prevent by force or threats any goods, wares, or merchandise being brought to any fair or market

The punishment for this offence is fine and imprisonment with or without hard labour (*c*)

**Stock**  
**Exchange**

**1140** A combination for the making of purchases or sales upon the Stock Exchange, where the sole object of the transaction is to cheat and mislead the public by what is called "making a market," is an illegal conspiracy and constitutes an indictable misdemeanor (*d*)

(*m*) Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict c 21), s 1 The offence is declared to be a misdemeanor "within the meaning of the Merchant Shipping Act, 1894" (57 & 58 Vict c 60) The punishment is therefore that which is imposed by that statute, see next note An Order in Council was made under this Act on the 21st November, 1895, prohibiting the catching of seals within ten marine miles of all the Russian coasts of Behring Sea and the North Pacific Ocean and within thirty miles of the Korman dowsky Islands and Robben Island As to the establishment of a close season for seals in the seas adjacent to the east coast of Greenland, see Seal Fishery Act, 1875 (38 Vict c 18), and Order in Council dated 28th November, 1876

(*n*) Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict c 21), s 1, Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 680

(*o*) Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict c 21), s 1 (*j*)

(*p*) Stat (1844) 7 & 8 Vict c 24, s 1

(*q*) *Ibid.*, s 4 This Act was repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict c 19), but the repeal will not revive the offences which it abolished, or affect those which were preserved by the proviso in s 4 (Interpretation Act, 1889 (52 & 53 Vict c 63), s 38)

(*a*) *R v Hulbers* (1816), 2 Chit 163 Before the stat (1844) 7 & 8 Vict c 24 it appears to have been immaterial whether the rumours spread were true or false if they were put about with the view of enhancing the market price of goods (*R v Waddington* (1800), 1 East, 143) Having regard to the terms of s 4, it is clear that it is only the spreading of false rumours which is now punishable.

(*b*) *R v De Borenger* (1814), 3 M & S 67, see *R v Gurney* (1869), 11 Cox. C C 414, 440

(*c*) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 29

(*d*) *Scott v Brown, Doering, McNab & Co.*, [1892] 2 Q B 724, 727, 730,

**1141** Subject to what is hereafter stated as to acts or combinations which occur during the course of a trade dispute between an employer and his workmen, it is an indictable misdemeanour, punishable by fine or imprisonment, for persons to combine together to prevent a man from carrying on his trade and so to impoverish him (c). But if the combination and the acts done in pursuance of it are mere acts of trade competition and intended to further the rival trade of the persons combining, and the acts are not in themselves unlawful, they do not afford ground for or an indictment (f).

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Offences  
relating to  
Trade.

Trade  
combinations.

An act done by one person which is not unlawful in itself is not indictable merely because it prejudices or interferes with the trade of another person, or prevents him from carrying on such trade, or because the person committing the act is influenced by malicious or bad motives (g). But an act may be criminal if done by two persons in agreement which would not be criminal if done by either of them alone (h).

The principles stated above are not confined to conspiracies in restraint of trade. Any conspiracy to do that which is either contrary to law or which is a wrongful and harmful act towards another person, and so an infringement of his civil rights, is a misdemeanour and indictable (a).

#### SUB-SECT. 2.—*Disputes between Employers and Workmen.*

**1142** In the case of trade disputes the law as above stated has been modified by statute.

Trade  
disputes

An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute is not indictable as a conspiracy, if such act, if committed by one person, would not be punishable as a crime (b).

This provision does not exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament and does not affect the law relating to riot,

O A, see also *R v Aspinall* (1876), 2 Q. B. D. 48, 59, and see title STOCK EXCHANGE.

(c) *R v Peckles* (1783), 1 Leach, 274. As to this case, see Wright on Criminal Conspiracies, p. 45, and *Mogul Steamship Co v McGregor, Gow & Co* (1889), 23 Q. B. D. 598, O A, at p. 632, and Lord BRAMPTON in *Quinn v Leathem*, [1901] A. C. 495, 530, in the last-mentioned case the House of Lords held that a combination, without justification or excuse, to injure a man in his trade by inducing his customers not to deal with him is actionable, if it results in damage to him. See title TRADE AND TRADE UNIONS.

(f) See *Mogul Steamship Co v McGregor, Gow & Co*, [1892] A. C. 25, *Boots v Grundy* (1900), 82 L. T. 769. These offences are not triable at quarter sessions.

(g) See *Bradford Corporation v Pickles*, [1895] A. C. 587, 594, *Allen v Flood*, [1898] A. C. 1, 139, 152, 153, where the earlier cases are fully stated, and see *Quinn v Leathem*, *supra*.

(h) See *R v Warburton* (1870), L. R. 1 O. C. R. at p. 276.

(a) *R v Rowlands* (1851), 17 Q. B. 671, *R v Warburton* (1870) L. R. 1 O. C. R. 274, *Quinn v Leathem*, *supra*, at pp. 528, 529.

(b) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 3.

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unlawful assembly, breach of the peace, sedition, or any offence against the State or Sovereign (c)

The word "crime" in this connection means an offence punishable on indictment, or an offence punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment

**Trade unions**

The purposes of a trade union are not, by reason merely that they are in restraint of trade, deemed to be unlawful so as to render any member of the trade union liable to criminal prosecution for conspiracy or otherwise (d). A trade union means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the Trade Union Act, 1871 (e), had not been passed, have been deemed to have been an unlawful combination as being in restraint of trade (f).

**SUB-SECT 3 — Criminal Breach of Contract Intimidation.**

**Statutory**  
**mis-**  
**demeanours.**

**1143** Although the provisions of the law of conspiracy have been relaxed in favour of those engaged in trade disputes, nevertheless everyone is guilty of a misdemeanour (g), who (h), being a person employed by a municipal authority, or by any company or contractor upon whom an Act of Parliament has imposed or who have themselves assumed the duty of supplying any city, borough, town or place or any part thereof with gas or water, wilfully and maliciously (i) breaks a contract of service with such authority

(c) Conspiracy and Protection of Property Act, 1875 (39 & 39 Vict c 86). As to the limit of punishment on a conviction for conspiracy to do an act punishable only on summary conviction, see *ibid*. Acts of this kind which are not indictable under this statute are not now indictable at common law (*Connors v Kent, Gibson v Lawson*, [1891] 2 Q B 545, 560). In the Trade Union Acts, 1871 to 1906 (31 & 35 Vict c 31, 39 & 40 Vict c 22, 6 Edw 7, c 47), and in the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or with the terms of the employment or with the conditions of labour of any person, the term "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises (Trade Disputes Act, 1906 (6 Edw 7, c 47), s 5). See, generally, title **TRADE AND TRADE UNIONS**.

(d) Trade Union Act, 1871 (34 & 35 Vict c 31), s 2

(e) 34 & 35 Vict c 31

(f) Trade Union Act Amendment Act, 1876 (39 & 40 Vict c 22), s 16

(g) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), ss. 4, 5, 7. Nothing in the Act applies to seamen or apprentices to the sea service (*ibid*, s 16). As to misconduct by and ill-treatment of such persons, see pp 556-558, *ante*, and p 608, *post*.

(h) *Ibid*, s 4

(i) An offence is committed maliciously within the meaning of this Act, whether the offence is committed from malice conceived against the person in respect of which it is committal or otherwise (Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c. 86), s 15, Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s 28)



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etc knowing or having reasonable cause to believe that the probable consequences of his so doing will be to deprive the inhabitants wholly or to a great extent of their supply of gas or water, or (2) who (k) wilfully and maliciously (l) breaks a contract of service or of hiring knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury (m), (3) who (n), with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing (o), wrongfully and without legal authority, uses violence to or intimidates (p) such other person or his wife or children or injures his property (q), or persistently follows such other person about from place to place (r), or hides any clothes, tools, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof, or watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place (s), or follows such other person with two or more other persons in a disorderly manner in or through any street or road (t)

The punishment for any such offence is a fine not exceeding £20,

(k) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86),

s 6

(l) See note (i), on p 564, *ante*

(m) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 16), s 5

(n) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), s 7.

(o) The particular act must be specified in the summons and conviction (*R v McKenzie*, [1892], 2 Q B 519)

(p) The word "intimidates" probably means by threats of personal violence only. It, at any rate, does not include a threat to bring about a strike (*Curran v Treleaven*, [1891] 2 Q B 545, 550, 562). But a threat to picket has been held to be intimidation within the meaning of the Act (*Judge v Bennett* (1887), 62 J P 247, *per* STEPHEN and A L SMITH, JJ. See the observation of MATHEW, J, on this case in *Curran v Treleaven*, *supra*, at p 560). See also *Peto v Apperley* (1891), 35 Sol Jo 792, *Haile v Allingtons* (1891), *ibid*, *Trevello & Sons v London Building Trades Federation* (1890), 72 L T 342, C A.

(q) The summons and conviction must specify the property injured (*Smith v Mood*, [1903] 1 K B 56)

(r) *Ex parte Wilkins* (1895), 64 L J (M C) 221, *Smith v Thomasson* (1890), 54 J P 96

(s) It is, however lawful for one or more persons acting on their own behalf, or on behalf of a trade union or of an individual employer or firm, in contemplation or furtherance of a trade dispute to attend at or near such a house or place, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working (Trade Disputes Act, 1906 (6 Edw 7, c 47), s 2). The following cases were decided before this Act, and their authority has been affected by it — *J Lyons & Sons v Wilkins* [1896] 1 Ch 811, C A., *J Lyons & Sons v Wilkins* [1899] 1 Ch 255, C A., *Thornock v Court*, [1899] 2 Ch 35, *Walters v Green*, [1899] *ibid*, 696. It is not essential that the persons who happen to be in the place beset should at the time be in the service or employment of any other person, and a depot ship for seamen awaiting engagement has been held to be a place within the meaning of the section (*Farmer v Wilson* (1900), 69 L J (Q B) 496).

(t) As to following, see *Ex parte Wilkins* and *Smith v Thomasson*, *supra*.

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or imprisonment with or without hard labour for not more than three months (a)

SUB SECT 4—*Truck Act*

**1144** An employer of any artificer in any of certain trades is by statute (b) guilty of a misdemeanour who directly or indirectly enters into any contract or makes any payment thereby declared illegal after having been twice previously convicted summarily of such offence (c)

The punishment is a fine of £100 (d)

SUB-SECT 5—*Forging etc Trade Marks*

Merchandise  
Marks Act

**1145** Every person is by statute (e) guilty of a misdemeanour (1) who (f) forges (g) a trade mark (h), or (2) falsely applies (i) to

(a) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), ss 4, 5, 7 The punishment is the same whether the offence is prosecuted summarily or on indictment (*ibid*, s 9) The offence is only punishable on indictment if the accused objects to be tried before a court of summary jurisdiction (*ibid*) This offence and the one next mentioned are triable at quarter sessions

(b) Truck Act, 1831 (1 & 2 Will 4, c 37)

(c) *Ibid*, s 9 This Act provides (ss 1, 2) that wages under contracts for the hiring of artificers must be paid in current coin and not in goods, and that such contracts must not contain any stipulations as to the place where or the manner in which the wages shall be expended The Act does not extend to domestic or menial servants (s 20) The term "artificer" includes any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, has entered into or works under a contract with an employer (Employers and Workmen Act, 1875 (38 & 39 Vict c 90), s 10, Truck Amendment Act, 1887 (50 & 51 Vict c 46) s 2) See, generally, the Truck Amendment Act, 1887 (50 & 51 Vict c 46), and the Truck Act, 1896 (59 & 60 Vict c 44), and title MASTER AND SERVANT

(d) Truck Act, 1831 (1 & 2 Will 4, c 37) s 9 The punishment for a first offence on summary conviction is a fine of £10, for a second offence, £20 (*ibid*).

(e) Merchandise Marks Act, 1887 (50 & 51 Vict c 28), amended by the Merchandise Marks Act, 1891 (54 & 55 Vict c 15), and the Merchandise Marks (Prosecutions) Act, 1894 (57 & 58 Vict c 19) At common law to copy a trade mark or a wrapper for goods, which wrapper was fraudulently made to resemble that used by another person, was not forgery, although if a person in the course of his trade, openly and publicly carried on, put a false mark or token upon an article so as to pass it off for a genuine one, when in fact it was spurious, and the article was sold and money obtained by means of that false mark or token, this would amount to a common law cheat, as to which see p 689, *post* (*R v Cloes* (1858), Dears & B 460, *R v Smith* (1858), Dears & B 566)

(f) Merchandise Marks Act, 1887 (50 & 51 Vict c 28) s 2

(g) A person is deemed to forge a trade mark who without the assent of the proprietor makes that trade mark or a mark so nearly resembling it as to be calculated to deceive or who falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise The burden of proving the assent of the proprietor is on the defendant (Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 4)

(h) Trade mark means a trade mark registered in the register of trade marks kept under the Trade Marks Act, 1905 (5 Edw 7, c 15), s 4, and any trade mark which either with or without registration is protected by law in any British possession or foreign State to which the provisions of s 91 of the Patents and Designs Act, 1907 (7 Edw 7, c 29), are applicable (*ibid*, s 3 Trade Marks Act, 1905 (5 Edw 7, c 15), s 4, Patents and Designs Act, 1907 (7 Edw 7, c 29), ss 91, 98) See title TRADE MARKS AND DESIGNS

(i) As to the persons who are deemed to apply a trade mark, see Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s. 5.

goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or (3) makes any die (*l*), block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark, or (4) applies any false trade description (*l*) to goods, or (5) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark, or (6) causes any of the things above mentioned to be done, unless in any such case he proves that he acted without intent to defraud (*m*)

The punishment for this offence on conviction on indictment is imprisonment with or without hard labour for not more than two years, or a fine or both (*n*)

**1146** Every person is by statute (*o*) guilty of a misdemeanour who sells or exposes for or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any

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Trade.

Sale of goods  
with forged  
marks

(*l*) See p. 568, *post*

(*l*) "Trade description" means any description statement, or other indication, direct or indirect, as to the number, quantity, measure, gauge or weight of any goods, or as to the place or country in which they were made or produced, or as to the mode of manufacture or production, or as to the material of which they are composed or as to their being the subject of an existing patent, privilege, or copyright (as to which see also Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 89 (2), which imposes a penalty of £5 in such cases), a "false trade description" is a trade description which is false in a material respect, and includes the alteration of a trade description where the alteration makes the description false in a material respect (Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 3). For special provisions as to watch cases, see *ibid* ss. 7, 8. A person who makes a false declaration for the purposes of the Act as to the country or place in which a watch case was made is liable, on conviction on indictment to the penalties of perjury (*ibid*, s. 8). A false statement on an invoice is a false description within the Act (*Coppen v Moore* (No. 1), [1898] 2 Q. B. 300), and a writing unintelligible by itself may be a trade description, if it is orally explained by the vendor at the time of sale (*Cameron v Wiggins*, [1901] 1 K. B. 1). There is a dictum of WRIGHT, J., in *Coppen v Moore* (No. 1), *supra*, that an oral false description is not a trade description within the Act, but see s. 3 (1), and *Cameron v Wiggins*, *supra*. See also as to what amounts to a false trade description, or to the application of such a description, *Kirshenbom v Salmon and Gluckstein*, [1898] 2 Q. B. 19, *Langley v Bombay Tea Co.*, [1900] 2 Q. B. 460, *Williamson v Tierney* (1900), 65 J. P. 70, *Davenport v Apollinaris Co* (1901), 67 J. P. 323, *North Eastern Breweries, Ltd. v Gibson* (1904), 68 J. P. 356, *Star Tea Co. v Whitworth* (1904), 68 J. P. 443, *Templer v Cripps*, [1906] 1 K. B. 16, *Hooper v Riddle & Co* (1906), 70 J. P. 417. In the case of imported goods evidence of the port of shipment will be *prima facie* evidence of the country in which the goods were made (s. 10 (2)), and the customs entry relating to imported goods is, for the purposes of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), deemed to be a trade description applied to the goods (Merchandise Marks Act 1891 (54 & 55 Vict. c. 15), s. 1).

(*m*) An intention to defraud is an intention to induce the buyer to take something different to that to which he was entitled under the contract, and which he did not know he was taking, whether it be worse than the article contracted for or not (*Starry v Chilworth Gunpowder Co* (1889), 24 Q. B. D. 90, *Kirshenbom v Salmon and Gluckstein*, *supra*). To constitute the offence there must be an intention to mislead (*Grudley v Surnborne* (1885), 52 J. P. 791).

(*n*) Merchandise Marks Act 1887 (50 & 51 Vict. c. 28), s. 2 (3), and see *ibid*, s. 2 (6). This offence is triable at quarter sessions. As to the punishment on summary conviction and the forfeiture of the goods, see note (*q*) on p. 568, *post*.

(*o*) *Ibid*, s. 2 (2).

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forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, unless he proves (1) that, having taken all reasonable precautions against committing an offence against the Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description, and (2) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods, or (3) that otherwise he had acted innocently (*p*).

The punishment for this offence on conviction on indictment is imprisonment with or without hard labour for not more than two years, or a fine or both (*q*).

**Defence.**

**1147** A defendant who is charged with making any die, block, machine, or other instrument for the purpose of forging or being used for forging a trade mark, or with falsely applying to goods any trade mark or any mark resembling a trade mark or any false trade description, and who proves (1) that in the ordinary course of his business he is employed to make dies etc for making or being used in making trade marks or to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom and was not interested in the goods by way of profit or commission dependent on their sale, and (2) that he took reasonable precautions against committing the offence charged, and (3) that at the time of the commission of the alleged offence he had no reason to suspect the genuineness of the trade mark, mark, or trade description, and (4) that he gave the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or trade description was applied, is entitled to be discharged, but is liable to pay the costs incurred by

(*p*) A person who has reason to suspect the genuineness of a trade mark on goods which he is selling may act innocently, and therefore be entitled to an acquittal of a charge under this section, if he states in good faith at the time of sale that there was a doubt whether the trade mark was genuine, and that he did not guarantee it, but sold the articles for what they were worth (*Christie, Manson and Woods v Cooper*, [1900] 2 Q B 522). Under this sub section an intention to defraud is not a necessary ingredient of the offence (*Hood v Burgess* (1889), 21 Q B D 162).

(*q*) Merchandise Marks Act, 1887 (50 & 51 Vict c 28) s 2 (3). A person charged before a court of summary jurisdiction with an offence against this Act has a right to be tried on indictment if he so desires and he must be informed of such right before the charge is gone into (*ibid*, s 2 (6)). Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 17. On summary conviction an offender may be sentenced to imprisonment with or without hard labour for four months, or to a fine of £20, and upon a second or subsequent conviction to imprisonment with or without hard labour for six months, or to a fine of £50, and, whether convicted on indictment or before a court of summary jurisdiction, the offender forfeits to the King every chattel, article, instrument or thing by means of or in relation to which the offence was committed (Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 2 (3)). The Vexatious Indictments Act, 1859 (22 & 23 Vict c 17), applies to indictments for offences against the Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 13. Offences against the Merchandise Marks Act, 1887, are triable at quarter sessions.

the prosecutor, unless he has given due notice to him that he will rely on this defence (r).

**1148** A person within the United Kingdom who procures, aids, or is accessory to the commission without the kingdom of any act which, if committed in the kingdom, would under the Merchandise Marks Act, 1887 (s), be a misdemeanour is guilty of that misdemeanour as a principal, and may be tried in any county or place in the kingdom in which he may be (t)

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Trade  
—  
Accessories.

**1149** No prosecution for an offence against the Merchandise Marks Act, 1887 (a), can be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens (b)

Limitation  
of time

**1150** The servant of a master resident in the United Kingdom who *bonâ fide* acts in obedience to the instructions of such master, and on demand made by the prosecutor has given full information as to his master, is not liable to prosecution under the Act (c). But a master is liable for any action on the part of his servant or agent which was done within the scope or in the course of his employment, and which may be an offence against the Act unless the master can prove that he acted in good faith and had done all that it was reasonably possible to do to prevent the commission by his agents and servants of offences against the Act (d)

Liability of  
master and  
servant

**1151** The Board of Trade, and in cases relating to agricultural or horticultural produce the Board of Agriculture and Fisheries, may authorise prosecutions at the public expense for offences against the Act (e)

#### SECT 7—Labels and Inducible Slanders

**1152** The publication of a defamatory label is a misdemeanour at common law. The publication of a defamatory label with knowledge that it is false is a statutory misdemeanour (f). To publish

(r) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28) s. 6, see also 2 (2), ante (s) 50 & 51 Vict. c. 28

(t) *Ibid.*, s. 11. After proceedings for an offence against the Act have been commenced by the issue of a summons or warrant of arrest if the justice who issued the summons etc., or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which the offence has been committed are in any premises of the defendant or otherwise in his possession or under his control in any place, such justice may issue a warrant authorising a constable named or referred to in the

warrant to enter such house etc. at any reasonable time by day and there search for and seize and take away such goods (*ibid.*, s. 12)

(a) 50 & 51 Vict. c. 28

(b) *Ibid.*, s. 15

(c) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 19 (3)

(d) *Coppen v. Moore* (No 2), [1894] 2 Q. B. 306, 314

(e) Merchandise Marks Act 1891 (54 & 55 Vict. c. 15), s. 2, Merchandise Marks (Prosecution) Act, 1894 (57 & 58 Vict. c. 19), s. 1, see Regulations of the Board of Trade of 21 May, 1892 (Statutory Rules and Orders Revised Vol VII, Merchandise Marks, pp. 13, 14), Regulations of the Board of Agriculture, 27 October 1894 (*ibid.*)

(f) Label Act, 1843 (6 & 7 Vict. c. 96), s. 4

## SECT. 7

Libels and  
Indictable  
Slanders.

or threaten to publish a libel upon any other person is a statutory misdemeanour (g) To slander a private person by mere spoken words is not indictable, unless they tend immediately to a breach of the peace, or are blasphemous or seditious (h) Prosecutions for libel and slander are dealt with in another part of this work (i)

## Part XII.—Offences against the Person.

SECT 1 — *Acts involving bodily Injury*SUB-SECT 1 — *Homicide*

## Homicide

**1153** The killing of a human being by a human being is in law known as homicide Homicide may be (1) culpable, *i.e.*, criminal, (2) justifiable, (3) excusable (h)

Culpable homicide is either murder or manslaughter, and is a felony at common law (l)

(1) *Murder*

## Murder

**1154** It is murder for a person of sound memory and discretion (m) unlawfully to kill any human creature in being and under the King's peace, with malice aforethought, either express or implied by law, provided the person killed dies of the injury inflicted within a year and a day after the same (n)

Man-  
slaughter

Manslaughter is the unlawful killing of such a person without malice either express or implied (o)

Presumption  
in cases of  
murder

When it has been proved that one person's death has been caused by another, there is a *prima facie* presumption of law that the act of the person causing the death is murder, unless the contrary appears from the evidence either for the prosecution or for the defence The onus is upon such person when accused to show that his act did not amount to murder (p)

Person in  
being

**1155** The person killed must be one who is in being It is neither murder nor manslaughter to kill an unborn child while still in its mother's womb (q), but if the child be born alive

(g) Libel Act, 1843 (6 & 7 Vict c 96), s 3

(h) As to blasphemous and seditious libels, see pp 460, 530, *ante*, as to oral words spoken in contempt of a judicial officer, see p 501, *ante*

(i) See title LIBEL AND SLANDER

(k) Stephen Digest of the Criminal Law, 6th ed., 175

(l) As to suicide, see p 592, *post*

(m) As to criminal acts committed by lunatics and the extent to which persons of unsound mind are responsible for such acts, see p 241, *ante*

(n) 3 Co Inst 47, 50, Co Litt 287 b

(o) *R v Taylor* (1834), 2 Lew C C 215, *R v Hughes* (1857), Dears & B 248 Both in murder and in manslaughter the criminal act may be one of omission as well as of commission (*R v Hughes, supra*)

(p) *Frost*, 255, 290. *R v Greenacre* (1837), 8 C & P 35, 42, *TINDAL, C J* Where, however, the deceased is killed in attempting to make an arrest, the onus is upon the prosecution to show that the arrest was lawful, and if this is not shown, the killing is manslaughter only (*R v Withers* (1784), 1 East, P O 295).

(q) 3 Co Inst. 60, 1 Hale, P O 433, 1 Hawk P C., c 13, s 16

and afterwards die by reason of a felonious act done to it in the mother's womb or in the act of birth, the person who committed that act is guilty of murder (a)

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Acts  
involving  
bodily  
injury.

A child is not considered in law to be completely born, so as to be the subject of either murder or manslaughter, until the whole body of the child is brought alive into the world having an independent circulation, and breathing, or capable of breathing, from its own lungs, so that it possesses, or is capable of, an existence independent of connection with its mother (b). But the child may be completely born although the umbilical cord be not severed (c)

**1156** The person killed must be in the King's peace. The king's peace extends to all persons in England, whether British subjects, outlaws, or aliens, except rebels and alien enemies who are at the time actually engaged in hostile operations against the Crown (d)

Person in  
the King's  
peace.

If a person is feloniously stricken, poisoned or otherwise hurt upon the sea or at any place out of England or Ireland, and dies of such stroke etc. in England or Ireland, or being feloniously stricken etc. in any place in England or Ireland dies of such stroke etc. upon the sea or at any place out of England or Ireland, the offence, whether it amounts to murder or manslaughter or of being accessory thereto, may be inquired into, tried and punished, in the county or place in England or Ireland where the death, stroke, poisoning, or hurt happens as if the offence had been wholly committed in that place (e)

**1157** If death does not ensue until after the expiration of a year and a day from the date when the injury was inflicted, it is an irrebuttable presumption of law that the death is attributable to some other cause, and the person who inflicted the injury is not punishable for either murder or manslaughter (f)

Death after  
a year and  
a day

(a) 3 Co Inst 50, 1 Hawk P C, c 13, s 16, *R v West* (1815) 2 Car & Kir 784, MAUIE, J, where in consequence of an act done by the prisoner with intent to procure abortion the child was born so prematurely that it died shortly after birth (see also *R v Senior* (1832), 1 Mood C C 66) but according to Hale such a killing is not murder (1 Hale, P C 433). As to procuring abortion, see p 596, post

(b) *R v Poulton* (1832), 5 C & P 329, LITTLEDALE J, *R v Innes* (1833), *ibid.*, 539, PARK J. In *R v Brann* (1841), 6 C & P 349, PARK J, it was held that a child born alive could be the subject of a murder although it had not in fact breathed, *R v Crutchley* (1837), 7 C & P 911, PARKER, B., *R v Sallis* (1837), 7 C & P 850, COLTMAN, J, where it was laid down that the fact that a child had breathed was not conclusive proof that it was born alive, as it might have breathed and died before birth, *R v Wright* (1811), 9 C & P 751, GURNEY, B.

(c) *R v Crutchley*, *supra*, *R v Truller* (1842), 2 Mood C C 260, C C B., *R v Reeves* (1839) 9 C & P 25, VACCHAN J.

(d) 3 Co Inst 47, 1 Hale, P C 433, 1 East P C 227, 4 Bl Com 198.

(e) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 10. This cannot apply to the case of a foreigner committing a murder abroad, even though the person murdered died here, no British statute can make the acts of a foreigner committed abroad punishable here. As to murder committed in England by a prisoner of war, see Post 188, *R v Suttler* (1858), 7 Cox C C 431, C C B., *R v Depardo* (1807), 1 Taunt 26. As to murders and other offences committed at sea or abroad, see pp 277, 284, *ante*.

(f) 3 Co Inst 53, 1 Hawk P C, c 13, s 9, 1 East P C 345. The day of the infliction of the injury is reckoned as the first day (*ibid.*, see *R v Martin* (1832), 5 C & P 128, approved in *R v Dyson*, [1908] 2 K. B 454, C C A.).

SECT. 1

Acts  
involving  
bodily  
injuryAccelerating  
deathDeath from  
fright.Intervening  
causesMalice afore  
thought.

**1158** A person may be guilty of murder or manslaughter whether he directly causes or accelerates death (g)

If the death of an infant or of an aged or infirm person directly results from fright caused by an unlawful assault committed by the accused upon another person, the accused is guilty of manslaughter (h).

Where one person attacks or threatens to attack another and compels the person attacked by bodily force, or induces him by a well-grounded apprehension of immediate serious violence, to do some act which directly results in his death, the person attacking or threatening to attack is guilty of murder (i)

If a dangerous wound is inflicted and death results, the person who inflicted the wound is criminally responsible for the death, although the person wounded neglected to use proper remedies (k) or refused to submit to a necessary operation (l), or died after such an operation which was carefully and properly performed (m)

If a wound is given which is not in itself mortal or dangerous, but which from improper treatment becomes the cause of death, the person who gave the wound will not be criminally responsible for the death, if it clearly appears that the death was caused by the improper treatment (n)

A person who gives false evidence which leads to the conviction and execution of an innocent person is not, it seems, guilty of murder (o)

**1159** To constitute murder there must be malice aforethought, express or implied by law

Express malice exists where the deliberate purpose of the accused is to deprive another of life or to do some great bodily harm (p)

It is unnecessary to show any intention to kill or injure the deceased person in particular or any special degree of ill will towards him, if there be an intention to kill or seriously injure anyone among a number of persons, as by firing a gun into a crowd, there is evidence of express malice (q)

(g) *R v Muston* (1862), 3 F & F 492, BYLES, J

(h) *R v Towers* (1874), 12 Cox, C C 530, DENMAN, J, where an infant was said to have died from convulsions brought on or made worse by the act of the defendant in committing an assault on its mother, see, however, 1 Hale, P C 429

(i) *R v Towers*, *supra*, at p 533, *R v Evans* (1812), 3 Russell on Crimes, 12 *R v Hickman* (1831), 5 C & P 101, PARK, J, *R v Pitts* (1842), Car & M 284 LUSHINE, J, and see *R v Halliday* (1889), 61 L T 701, C C R See *R v Curley* (1909), 2 Cr App Rep 109

(k) 1 Hale, P C 428, 1 East, P C 344, *R v Rew* (1662) Kel 26, *R v Flynn* (1867), 16 W R 319, C C R (Ir)

(l) *R v Holland* (1841), 2 Mood & R 351, MAULE, J

(m) *R v Pym* (1846), 1 Cox C C 339, ERLE and BOLFE, JJ, *R v McIntyre* (1847), 2 Cox, C C 379, COLERIDGE, J, *R v Davis* (1883), 15 Cox, C C 174, MATHEW, J

(n) 1 Hale, P C 428, *R v Flynn*, *supra*

(o) *R v MacDaniel* (1756), 1 Leach, 44, see, as to this case, Fost. 131, 1 East, P C 333.

(p) 1 East, P C 222, 223, see also 3 Co Inst 51, 1 Hale, P C 451

(q) 1 Hawk P C, c. 11, s. 12 In such a case the malice is called general.



**1160** Anyone who kills another person upon the desire or command of the latter is guilty of murder (r) Anyone who kills an innocent and unoffending person in order to save his own life is guilty of murder (s)

**SECT. 1.**  
**Acts**  
**involving**  
**bodily**  
**injury.**

**1161** If anyone shoots at or stabs or lays poison for or does any other act with the malicious intent to kill one person, and by mistake kills another person by means of such act, the person who does the act is guilty of the murder of the person killed (a)

Killing by  
request, or to  
save life  
Killing by  
mistake  
Inciting to  
suicide.

**1162** If anyone incites another person to commit suicide, and such person does commit suicide, the one who incites is guilty of murder, if two persons agree and attempt to commit suicide together, and one commits suicide and the other does not, the survivor is guilty of murder (b)

**1163** Malice aforethought is implied by law (1) where the person killed is an officer of the law legally arresting or imprisoning the accused or executing other process of law in a legal manner, (2) where, although there may have been provocation, such provocation has not been sufficient to reduce the offence to manslaughter; (3) where the killing has been caused by the accused while he was committing some other felony

Malice  
implied.

**1164** The act which causes death is murder, where the death is the result of intentional forcible opposition to an officer of justice in all cases where that officer has either by common law or by statute a right or is under a duty to arrest or keep in custody any other person or to prevent the commission of a felony or breach of the peace and is actually engaged in the performance of that duty (c), provided the accused knows that such person is an officer acting in pursuance of his duty

Opposition to  
officers.

The same principle extends to private persons assisting officers, whether specially called upon to do so or not (d), to private persons interposing in case of an affray or endeavouring to apprehend felons (e), or arresting in cases where either by common law or by statute they have power to arrest, to bailiffs and other officers executing civil process (f), to gamekeepers when

Private  
persons  
assisting  
officers.

(r) 1 Hawk P. C., c. 9, s. 6, *R v Stanger* (1815), 3 Russell on Crimes, 5, n.

(s) 1 Hale, P. C. 451, 455, *R v Dudley* (1851) 14 Q. B. D. 273

(a) Bract De Cor. c. 36, Rolls ed. II., 51, Post 261, *R v Saunders* (1576), Plowd. 473, *R v Hunt* (1820), 1 Mood C. C. 93, *R v Bernard* (1858), 1 F. & F. 211, CAMPBELL, C.J. In such cases the rule is *malitia creditur personam*

(b) *R v Dyson* (1823), Russ. & Ry. 223, *R v Alison* (1838), 5 C. & P. 418, PALLISON, J., *R v Joseph* (1847), 16 Cox, C. C. 203, LIFTON, J., *R v Stormouth* (1897), 61 J. P. 729, RIDLEY, J., *R v Abbott* (1903), 67 J. P. 161, KENNEDY, J.

(c) 1 Hale, P. C. 457 Post 270, 308, 309, *R v Howarth* (1829), 1 Mood C. C. 207, *R v Woolmer* (1842), 1 Mood C. C. 334, *R v Williams* (1853), 1 Mood C. C. 387 (*R v Porter* (1873), 12 Cox, C. C. 444, BRETT, J.

(d) Post 309, *R v Porter*, *supra*

(e) Post 309

(f) Post 310, 311, 1 Hawk P. C., c. 13, s. 61 As to arrest see p. 296, *ante*.

**SECT 1**  
**Acts**  
**involving**  
**bodily**  
**injury.**

The authority  
must be  
lawful.

entitled to arrest poachers (*g*), and to members of a press gang (*h*)

The officer or other person killed must have been acting at the time under a lawful authority. If he was at the time acting under a writ or warrant which is invalid on the face of it, or if the deceased officer was arresting or attempting to arrest the accused without a warrant for a cause for which he was not entitled so to arrest him, the killing is manslaughter only, and not murder (*i*), but the fact that the process is merely informal (*h*), or that a civil judgment upon which the warrant to arrest is based is erroneous (*l*), does not prevent the killing from being murder.

The same principles apply where a constable or other person present is killed when lawfully interfering to prevent the commission of a crime or a breach of the peace (*m*). The officer must at the time when he was killed have been acting within the limit of his local authority, or the offence will be only manslaughter (*n*).

The killing of an officer in the execution of his duty is not murder unless he is both lawfully authorised and exercising his authority in a legal manner. If an officer is killed while attempting to arrest a prisoner for a misdemeanour for which he is not entitled to arrest without a warrant, and the officer has not the

(*g*) *R v Ball* (1832), 1 Mood C C 330, *R v Wuthorne* (1828), 3 C & P 391, see also *h v Warner* (1833), 1 Mood C C 380. If the gamekeeper is the servant of a person who has only the right of shooting and is not the owner or occupier of the land, he has no right to arrest, and may be resisted if he attempts to arrest (*R v Wood* (1809), 1 F & F 470, MARLIN, B).

(*h*) *R v Broadfoot* (1743), Fost 154.

(*i*) Fost 311, 312 *R v Stockley* (1753), 1 East, P C 310 (warrant issued in blank which had afterwards been filled in by the officer), *R v Hood* (1830), 1 Mood C C 281 (warrant leaving a blank for the Christian name of person to be arrested and giving no reason for omitting it, but describing the person insufficiently, but see *R v Winwick (Inhabitants)* (1800), 8 Term Rep 454, Lord KENYON, C J), *R v Thompson* (1825), 1 Mood C C 80, *R v Curran* (1826), 1 Mood C C 132 (arrest without warrant), *R v Walker* (1854), Dears C C 308 (arrest for a previous assault without a continued pursuit), *R v Lockley* (1864), 4 F & F 153, SIFFE, J (attempted arrest and handcuffing for bad language), *R v Pribble* (1838), 1 F & F 325 BRAMWELL, B, compare *R v Serra* (1843), 1 Den 104. But if after an arrest the person arrested kills the officer, not with a view to obtain his own liberation, but from motives of revenge, the offence is murder, although the arrest may have been illegal (*R v Sattler* (1855), Dears & B 539).

(*j*) *R v Allen* (1867), 17 L T 222 BLACKBURN and MELLOP, JJ. In this case there was a deliberate intention to rescue and to kill the officer having a prisoner in custody and the accused had no knowledge of the alleged informality.

(*l*) 1 Hale, P C 457, Fost 311, *R v Markalley* (1611), 9 Co Rep 65 a, 68 a.

(*m*) 1 Hawk P C, c 13 ss 48 54, Fost 310, *R v Lockley, supra*, *R v Curran* (1828), 3 C & P 397.

(*n*) *R v Tiley* (1709), 2 Ld Raym 1296 1302, *R v Weir* (1823), 1 B & C 288, 293, see also *R v Sanders* (1867), L R 1 C C R 75, *R v Crompton* (1850), 5 Q B D 311, C C R. If the constable named in the warrant hands it over to some other person to execute, the officer named not being present or close at hand, and the person attempting to make the arrest is killed, the offence is only manslaughter (*R v Markalley* (1835), 7 C & P 245, WILLIAMS, J, *R v Patience* (1837), 7 C & P 775, PALKE, B).

warrant in his possession at the time (o), the offence is manslaughter, not murder (p)

If an officer is killed when breaking open the outer door of a house for the purpose of making an arrest, and he has not first demanded admittance and been refused, the killing is manslaughter only (q).

If there is no evidence of express malice, the killing of an officer is only manslaughter, if the prisoner did not know that the deceased was an officer (r). If he had that knowledge either from seeing the warrant or from his previous acquaintance with the deceased, or if, in the absence of such knowledge, there is evidence of express malice, the offence is murder (s).

If a private person lawfully arresting or interfering gives notice of the intention with which he is acting and is killed, the offence is murder, if he does not give such notice, the offence is manslaughter (t).

**1165** If a criminal is sentenced to death by a court having authority to pass such a sentence, his execution in the proper manner and by the proper officer is justifiable, but if the execution is by an officer upon whom that duty is not cast, or if it is carried out in a different manner from that which is authorised by the form of the sentence, it is murder (a).

**SECT. 1.**  
**Acts**  
**Involving**  
**bodily**  
**Injury**

Execution of  
criminal

**1166** Where an officer is forcibly resisted while in the legal execution of his duty, whether such duty relates to civil or to criminal process, he is entitled to repel force by force, and if in the course of so doing the person resisting him is killed, the killing is justifiable, provided there was a reasonable necessity for the use of such force by the officer, and that the amount of force used was not unreasonable or excessive, otherwise the killing is manslaughter at least. An officer who kills a person who makes no resistance is guilty

Killing by an  
officer who is  
resisted

(o) See p 309, *ante*

(p) *R v Chajman* (1871), 12 Cox, C C 4, HALL, J., *R v Carey* (1879), 14 Cox, C C 214, LINDLEY, J. But in this and all other cases of irregular arrest it would appear that if the accused acted with premeditation and from a previously existing intention to murder the officer, whether he were duly authorised or not, the offence is murder (see *R v Allen, supra*, *R v Carey, supra*).

(q) *Fost* 136, 320. See p 309, *ante*

(r) *R v Curtis* (1706), *Fost* 130, 137, *R v Stockley* (1772), 1 East P C 310, *R v Gordon* (1789), *ibid* 310, 352.

(s) 1 Hale, P C 438, 458, 461, 470, 1 Hawk P C, c 13, ss 49, 50, *Fost* 310, *R v Woolmer* (1832), 1 Mood C C 334. On the trial of an indictment in such a case it is not necessary to prove the officer's appointment, it is sufficient that he was known to act as such (*R v Gordon* (1789), 1 Leach, 518).

\* (t) *Fost* 311. But express notice is not required where the circumstances of the case were such that the prisoner must have known why the private person was seeking to apprehend him, as where he was caught in the act of committing a felony (*R v Howarth* (1828), 1 Mood C C 207).

(a) 3 Co Inst 52, 1 Hale, P C 501. But, as Hale points out, it was in former times common to modify the form of execution for high treason from that directed by the express terms of the sentence (see *Fost* 267). As to the mode of execution and the officers whose duty it is to carry out a sentence of death, see *Offences against the Person Act*, 1861 (24 & 25 Vict c 100), ss 1, 2, *Capital Punishment Amendment Act*, 1868 (31 & 32 Vict c 24), ss 2, 3, (*Criminal Court (Prisons) Act*, 1881 (44 & 45 Vict c 64), s 2 (5), *Sheriffs Act*, 1887 (50 & 51 Vict c 55), s 13.

**Secr. 1.**  
**Acts**  
**involving**  
**bodily**  
**injury.**

of murder (b) The same rule applies to killing by persons assisting officers or lawfully arresting or interfering to prevent a breach of the peace (c).

An officer is not bound to retreat before the person resisting (d)

Officers attempting to put an end to a riot, and other persons assisting them, are justified in killing persons taking part in it who refuse to disperse or who resist apprehension (e)

If a person whom an officer or a private person is legally attempting to arrest upon a charge of treason, or felony, or inflicting a dangerous wound, flees, and he cannot be otherwise arrested, he may be killed, and the homicide is justifiable (f)

If the charge upon which the arrest is sought to be made is only a misdemeanour or a breach of the peace, or if the attempted arrest is on civil process, the killing by the officer is murder, if it is intentional or is done with a weapon likely to kill, but only manslaughter if the death is unintentionally caused by means not likely to cause death (g)

Every prison officer while acting as such has, by virtue of his appointment, all the powers, authorities, protection, and privileges of a constable (h)

**Provocation.**

**1167** When the accused person has received provocation from the deceased, malice aforethought is nevertheless implied and the killing is murder, unless the provocation be of such a character as to reduce the offence to manslaughter If there is evidence of

(b) 1 Hale, P C 490, 494, 496, 1 East, P C 297, Fost 318, 321, *R v Goffe* (1672), 1 Vent 216, *R v Dixon* (1756), 1 East, P C 313, where a person not liable to impressment resisted the press gang and was killed and thus was held to be murder, *R v Longden* (1612), Russ & Ry 228

(c) 1 Hale, P C 484, Fost 271

(d) 1 Hale, P C 481 Fost 321

(e) 1 Hale, P C 495, 1 Hawk P C, c 10, s 14, Riot Act (1 Geo 1, stat 2, c 5), s 3 As to homicide during an unlawful assembly, see *R v McNaughten* (1881), 14 Cox, C C 576 (Ir)

(f) 1 Hale, P C 489, 1 Hawk P C, c 10, ss 11 12, Fost 271 As to the killing of a person trying to escape from a press gang who had pressed him without due warrant, see *R v Rokeby* (1690), 1 East, P C 312, and *R v Dixon supra*

(g) 1 Hale, P C 489, 2 Hale, P C 77, 117, Fost 271, 1 East P C 302, 306

(h) Prison Act, 1898 (61 & 62 Vict c 41) s 10 The provisions of this Act are extended to State inebriate reformatories by the Inebriates Act, 1898 (61 & 62 Vict c 60), s 4 If a prisoner confined for treason, felony or inflicting a dangerous wound were killed by a gaoler whilst effecting his escape and where there was no other way of preventing such escape, no question could arise as to the justification of the gaoler, since he would have the same protection as a constable With regard to a prisoner convicted of a misdemeanour and under sentence of penal servitude, he, by escaping during his sentence, commits the felony of being at large during a sentence of penal servitude (see p 512, *ante*), and the officer in seeking to recapture him has the same protection as in the case of an ordinary felon But a convict detained for misdemeanour and not under a sentence of penal servitude, or a person who is imprisoned for debt and who escapes, may not be killed (*R v Forster* (1825), 1 Lew Cl. C 187, HOLBOYD, J.), unless he resists the gaoler and gives him reasonable ground for believing himself to be in peril of his life or of bodily harm, in which case the latter is entitled to use a deadly weapon, if no other is at hand (*ibid.*, 1 Hale, P C 486, 1 East, P C 295)

express malice, no provocation is sufficient to reduce the crime to manslaughter (v).

Mere words or gestures, however insulting or indecent, will not in themselves so reduce the offence, where the killing is intentional or is caused by a weapon likely to cause death (h). But it may be otherwise where such words are of a threatening nature and are accompanied by blows, although the latter may not of themselves be of sufficiently serious a nature as to reduce the offence from murder to manslaughter (l).

Provocation, however great, is insufficient for this purpose, if it is not recent and if there has been a sufficient time between the provocation and the killing for passion to subside and for reason to interpose (m). Provocation is also insufficient for the purpose of reducing the offence from murder to manslaughter, if the manner of killing be barbarous and such as to show a cruel and deliberate intent to do mischief (n).

SECT. 1.  
Acts  
involving  
bodily  
injury.

**1168** If anyone entitled to inflict lawful correction (o) while inflicting such correction unintentionally kills the person who is being corrected, the law does not imply malice. The death is regarded as having occurred by misadventure, if, having regard to the circumstances, the correction was inflicted moderately and with a proper instrument not likely to cause death or serious injury.

Correction.

If the correction is inflicted with a deadly weapon and death is caused, the person inflicting correction is guilty of murder, if the

(v) *R v Mason* (1766), FOST 132, 135, 291, *R v Kirkham* (1837), 8 C & P 115, *R v Welsh* (1869), 11 Cox, C C 336, *R v Whiteley* (1829), 1 Lew C C 173, 175. See also p 550, *post*.

(h) FOST 290, 1 Hale, P C 455, 456, 457, 1 Hawk P C, c 13, s 33, 1 East, P C 233, *R v Morley (Lord)* (1666) Kel 55, *R v Sherwood* (1844), 1 Car & Kir 556, POULOCK, C B. See, however, *R v Rothwell* (1871), 12 Cox, C C 140, in which BLACKBURN, J., appears to have been prepared to admit at least one exception to the rule, as he expressed the opinion that "if a husband suddenly hearing from his wife that she had committed adultery and he, having had no idea of such a thing before, were thereupon to kill his wife, it might be manslaughter." Where, however, there are no blows there must be a provocation equal to blows, it must be at least as great as blows. This case was followed in *R v Jones* (1905), 72 J P 210.

(l) FOST 290, 291, 1 East, P C 233, where it is suggested that it might be sufficient, if the words were accompanied by some act denoting an immediate intention of following them up by an actual assault, *R v Sherwood, supra*, *R v Smith* (1866), 4 F & F 1066, where BYLES, J. expressed an opinion that if two military men met each other in the street, and one of them called the other a coward and a scoundrel and assaulted him by spitting in his face, whereupon the other killed him, this would be only manslaughter, but that if an ordinary quarrel arose between husband and wife, and the wife spat at the husband and he thereupon killed her, this would be murder.

(m) FOST 296, 1 Hawk P C, c 13, s 40, Kel 56, 1 East, P C 232, *R v Lynch* (1832), 5 C & P 324, LORD TENNYSON, C J, *R v Haynard* (1833), 6 C & P 157, TINDAL, C J, *R v Fisher* (1837), 8 C & P 182, where PARK, J., said that whether there had been time for the blood to cool was rather a question of law.

(n) 1 Hale, P C 454, FOST 291, 1 Hawk P C, c 13, s 42, 1 East, P C 235, *R v Thorpe* (1829), 1 Lew C C 171, BAYLEY, J., *R v Sta* (1834), 6 C & P 372, *R v Thomas* (1837), 7 C & P 817, 819, PARKE, J., compare *R v Ayes* (1810), Buss & Ry 166.

(o) As to the cases in which correction by personal chastisement is lawful, see p 608, *post*.

## SECT 1

Acts  
involving  
bodily  
injury.

## Duels.

correction is inflicted with an instrument improper for the purpose but not likely to kill, or if the correction exceeds the bounds of moderation, the offence is manslaughter (*p*).

**1169** If two persons deliberately fight a duel and either party is killed, the law implies malice aforethought, and the survivor is guilty of murder, no matter what provocation he may have received or upon whose challenge the duel was fought (*a*)

Both the seconds who are present aiding and abetting are guilty of murder as principals in the second degree, as are also any other persons who are present and who encourage the combatants by advice or assistance (*b*)

If a duel is fought upon a sudden quarrel, and one of the parties is killed, the offence is manslaughter, and not murder (*c*)

Fight on  
sudden  
quarrel.

**1170** Although if death results from a fight upon a sudden quarrel (*d*), the person who causes the death is generally guilty of manslaughter only, yet if in such a fight the parties separate, or are separated, and one afterwards lies in wait for the other and renews the fight, in the course of which the latter is killed, the person killing him is guilty of murder (*e*)

If to all appearance the parties are reconciled and afterwards fight again on a fresh sudden quarrel and one of them is killed, this is only manslaughter, unless the circumstances show that the reconciliation was merely pretended and that the injury done was on account of the former grudge (*f*)

In the case of a sudden quarrel, if the facts show that there was malicious intention on the part of the person who caused the death (*g*),

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(*p*) 1 Hale, P C 473, 474, Post 262 1 Hawk P C, c 11, s 3, *R v Turner* (undated), cited in *R v Keate* (1695), Comb 407, 408, *R v Gray* (1686), Comb 408 *R v Wiggs* (1785), 1 Leach, 373, n (chastisement of a servant), *R v Wall* (1802) 28 State Tr 51, 145, where the prisoner, a colonial governor, was convicted of murder for ordering an excessive flogging which caused death, *R v Corner* (1836), 7 C & P 438, *R v Cheeseman* (1836), 7 C & P 455, *R v Bird* (1850), 5 Cox, C C 1, *R v Hopley* (1860), 2 F & F 202, COCKBURN, C J The chastisement of a child of very tender years must be of the very lightest description (*R v Griffin* (1869), 11 Cox, C C 402, MARTIN, B, where a father who had caused the death of his child aged two and a half years by beating it with a strap was convicted of manslaughter)

(*a*) 1 Hale, P C 443, 452, 1 Hawk P C, c 31 ss 21, 22, Post 297, *R v Mauquridge* (1706), 17 State Tr 57, *R v Oneby* (1726), 17 State Tr 29, *R v Rue* (1803) 3 East, 581, GROSE, J

(*b*) 1 Hale, P C 442, 452, *R v Cuddy* (1843), 1 Car & Kir 210, WILLIAMS, J, and BOLLE, B *R v Young* (1836), 8 C & P 644, VAUGHAN, J Mere presence as a spectator without giving encouragement or assistance will not justify a conviction (*R v Young*, *supra*, and see *R v Coney* (1882), 8 Q. B. D 634 C C R, and p 582, *post*)

(*c*) Post 297, 1 Hawk P C, c 13, s 29 See p 581, *post*

(*d*) See p 581, *post*

(*e*) 1 Hale P C 451 452, *R v Selten* (1871), 11 Cox, C C 674, HANNEN, J

(*f*) *Ibid* 1 Hawk P C, c 13, s 30

(*g*) As where he has started the fight under circumstances of unfair advantage (Post 295, *R v Mauquridge*, *supra*, *R v Whistley* (1829), 1 Lew C C 173, 176, BAYLEY, J, *R v Kessal* (1824), 1 C & P 437, PARK, J, *R v Smith* (1837), 8 C & P 160 162, BONAQUET and COLTMAN, JJ and BOLAND, B), or where he has gone on to kill the deceased after completely overpowering him (*R v Shaw* (1834), 6 C & P 372, PATTESON, J)

the person killing is guilty not of manslaughter, but of murder

SECT. 1.  
Acts  
involving  
bodily  
injury.

**1171** Where a person whilst committing or attempting to commit a felony does an act which is known to be dangerous to life and likely in itself to cause death, and the death of another person results as a consequence of that act though not intended by the person committing it, the law implies malice aforethought, and the person causing the death is guilty of murder (*h*)

Death  
caused while  
felony is  
committed

**1172** A person is guilty of murder who administers to or incites a woman to take drugs for the purpose of procuring abortion, whether she be in fact pregnant or not (*i*), or who uses instruments for that purpose (*j*), if the woman dies in consequence of the drugs or operation

Murder of  
woman by  
drugs taken  
to procure  
abortion

**1173** If death is caused during the commission of an act which is unlawful but not felonious, malice aforethought is not implied and the offence is manslaughter only (*k*)

Death by  
unlawful act.

**1174** Where several persons are engaged in a common design and another person is killed, whether intentionally or unintentionally, by an act of one of them done in prosecution of the common design, the others present are guilty of murder, if the common design was to commit murder, or to inflict felonious violence, or to commit any breach of the peace and violently to resist all opposers. If the common design was merely to commit an unlawful act involving violence, the others are guilty of manslaughter only (*l*)

Common  
design.

(*h*) *R v Hanson* (1862), 3 F & F 257, *BRAMWELL, B. v. Temple* (1862), 3 F & F 520, 522, *POLLOCK, C.B. v. Serré* (1887), 16 Cox, C C 311, 313, *STEPHEN, J.*, where the death was caused by the prisoner setting fire to a house with intent to defraud, *R v Whitmarsh* (1898), 62 J. 711, a case of death from an attempt to procure abortion where *BIGHAM, J.* directed the jury that the killing would be murder, unless the chance of death was so remote that no reasonable man would take it into consideration. There are old *dicta* to the effect that if death is caused during the commission of any felony it is murder (see 3 Co Inst 56, *Fost* 258, 1 East, P C 255, *R v Keate* (1698), *Camb* 106, where, however, *HOLT, C.J.*, at p 409, expressed the opinion that the statement of the law by Coke in 3 Co Inst 56 was too wide, *R v Woodburne* (1722), 16 State Tr 54, 50). But it is submitted that the modern rule is as stated in the text, which is taken from the summing up of *STEPHEN, J.*, in *R v Serré, supra*, and it is believed that juries are now usually directed by judges in that way.

(*i*) *R v Russell* (1832) 1 Mood C C 356, *R v Taylor* (1857) *Deans & B* 288. Compare *R v Fretwell* (1862), *L & Ca* 161, where the prisoner procured the drug for the deceased knowing the purpose for which she intended to use it, but the jury found that he did not incite her to take it, and it was held that he could not be found guilty of murder. Such a person might be found guilty of a misdemeanour under s 59 of the Offences against the Person Act, 1861 (24 & 25 Vict c 100). See p 597, *post*.

(*j*) *R v Whitmarsh, supra*.

(*k*) 1 Hawk P C, c 27, s 6, *R v Sawyer* (1815), 3 Russell on Crime 100, n. (l) *Fost* 353, 1 Hawk P C, c 13 ss 31-34, *R v Hawkins* (1825), C C 1 392, *PARK, J.*, *R v Hodgson* (1730), 1 Leach, 6, *R v Turner* (1803) 4 F & F 339, 341, *CHANNELL, B. v. White* (1806), *Russ & L*, 49, *R v Tyler* (1838), 8 C & P 616, *R v Markin* (1838), 2 Lew C C 225, *ALLIBON, B. v. Price* (1858), 8 Cox, C C 96, *BYLES, J. v. Luck* (1862), 1 F & F 483, *BYLES, J. v. Skeet* (1866), 4 F & F 931, *POLLOCK, C.B. v. Doddridge*

## SECT 1

Acts  
involving  
bodily  
injury.Man-  
slaughter(u) *Manslaughter*

**1175** Anyone is guilty of manslaughter (*m*) who (1) unlawfully kills another upon provocation of such a character (*n*) as to reduce the offence from murder to manslaughter, or upon a sudden quarrel, or (2) who, while committing an unlawful act or a felony not likely to cause danger to others, unintentionally kills another person, or (3) who unintentionally causes the death of another by the culpable neglect of a legal duty resting upon the person causing the death (*o*)

## Provocation

**1176** If a person finds a man in the act of committing adultery with his wife and immediately kills either the adulterer or the adulteress, the act of killing is manslaughter, and not murder (*p*)

If any person unlawfully inflicts violent blows upon another or assaults him under circumstances of personal indignity (*q*), or unlawfully arrests or imprisons him (*u*), and the person so provoked immediately and unjustifiably kills the other, the offence is manslaughter, and not murder

The nature of the weapon which caused the death must be taken into consideration. If a deadly weapon be used, the provocation required to reduce the crime from murder to manslaughter must be of a much more serious nature than if no weapon, or one not likely to cause death, were employed (*b*)

(1860), 8 Cox C. C. 335 *R v Bernard* (1808), 1 F & F 240, *R v Rubens* (1909), 2 Cr App Rep 163 and see p 252, *ante*

(*m*) For a general definition of manslaughter, see p 570, *ante*, and for various cases of manslaughter, see pp 572-9, *ante*

(*n*) As to the degree of provocation which suffices for the purpose, see p 576, *ante*, and see the next paragraph, *infra*

(*o*) Cases of the first class have been distinguished as voluntary and of the second and third as involuntary manslaughter but this distinction is of no practical importance. As to death unintentionally caused during the commission of a dangerous felony, see p 579 *ante*. With regard to homicide caused during the commission of an act which is unlawful, it is perhaps uncertain whether, if the act is simply *malum quia prohibitum*, the illegality would be such as to render the doer guilty of manslaughter, as, e.g., death accidentally caused while shooting at game by a person holding no licence authorising him to kill game. The older view was that the killing in such a case would not be manslaughter (see 1 Hale P. C. 475, Post 259, 290)

(*p*) 1 Hale, P. C. 486, Post 296, *R v Manning* (1671), T Raym 212 *R v Pearson* (1835), 2 Lew C. C. 216, PARKER, B., *R v Kelly* (1848), 2 Car & Kir 814, ROYCE, B. If a rape is being committed on the wife, the killing of her assailant by the husband is justifiable (1 Hale, P. C. 486). In *R v Fisher* (1837), 8 C. & P. 182, PARK, J., expressed an opinion that the case of a father actually seeing his son and another person committing an unnatural offence would come within the same rule as the case of adulterers, and that killing by the father of such a person would only be manslaughter. As to provocation by an assault committed on a member of the family of a person who kills another, see *R v Harrington* (1866), 10 Cox, C. C. 370, COCKBURN, C.J.

(*q*) As by pulling his nose, Kel 135, 1 East, P. C. 233, *R v Manbridge* (1706), 17 State Tr 57, 69. See p 577, *ante*

(*a*) *R v Withers* (1784), 1 East, P. C. 233, *R v Thompson* (1825), 1 Mood C. C. 80, *R v Curwen* (1826), 1 Mood C. C. 132, and see cases cited on p 571, note (d), *supra*

(*b*) Kel 130, 131, Post 290-291. 1 East, P. C. 233, 1 Hawk P. C., c. 13, ss 33, 34 *R v Stedman* (1704), Post 292, *R v Hagan* (1837), 8 C. & P. 167, COLTMAN J., see also *R v Tranter* (1722), 16 State Tr 1, 52, *R v Willoughby* (1791), 1 East, P. C. 238. As to when homicide is justifiable, see p 586, *post*



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—  
Drunkenness

**1177.** Although voluntary drunkenness is no excuse for crime, yet in cases where a certain degree of provocation has existed, the drunkenness of the accused may be taken by the jury into consideration upon the question whether the prisoner was excited by passion, or feared an attack upon himself, or whether he acted from malice (c) If the drunkenness was so great as to have prevented the accused from forming any intention, the offence is manslaughter, and not murder (d)

If the state of intoxication during which the homicide was committed was not voluntary, but was caused by the malice or negligence of another person, and the accused was in such a state as not to know what he was doing, the person who committed the homicide is not guilty of a crime (e)

**1178** If a sudden quarrel arises, the parties to which fight upon fair terms either immediately or at a place to which they immediately resort for that purpose, and one of them is killed, the person killing the other, providing he took no unfair advantage, is guilty of manslaughter, and not of murder, whichever of them may have struck the first blow (f)

Sudden  
quarrel.

**1179** All struggles in anger, either by fighting or wrestling or in any other mode, are unlawful, and if in such a struggle the death of one person is caused by the intentional act of another, although the intention is not to cause death, the person causing the death is guilty of manslaughter (g)

Struggles in  
anger

(c) *R v Grindley* (1819) 1 Russell on Crimes, 6th ed 141, n, HOIGROVD, J, *R v Pearson* (1835), 2 Lew C C 144, PARK, J, *R v Thomas* (1837), 7 C & P 817, PARK, B, *R v Gamlen* (1859), 1 F & F 90, CROWDER, J, see also *R v Marshall* (1810), 1 Lew C C 76, PARK, J, *R v Mont house* (1819), 4 Cox, C C 55, COLLRIDGE, J, *R v Moore* (1872) 3 C & K 319, *R v Doody* (1854), 6 Cox, C C 463, the last two being cases of suicide. But see, contra, *R v Carroll* (1835), 7 C & P 115, in which PARK, J, expressly disapproved of the dictum of HOIGROVD, J, in *R v Grindley*, *supra*, that where, as upon a charge of murder, the material question is whether an act was premeditated or done only with sudden heat and impulse, the fact of the party being intoxicated is a proper circumstance to be taken into consideration, see also *R v Meakin* (1836), 7 C & P 297.

(d) *R v Doherty* (1887), 16 Cox, C C 306, 308, see also *R v Moore*, *supra*, *R v Indy*, *supra*, *R v Meade*, [1909] 1 K P 899, at p 899, C C A. See also *R v Burke* (1908) *Times*, 11th December, 1908.

(e) 1 Hale, P C 32, Stephen, Digest of the Criminal Law 6th ed 23. A person who while in *delirium tremens* or in a state of frenzy originally caused by excessive drinking, kills another is regarded by the law as if he were insane (1 Hale, P C 32, *R v Davis* (1881), 14 Cox, C C 663, STEPHEN, J.)

(f) 1 Hale, P C 453, 456, Fost 295, 296, 1 Hawk P C, c 13, ss 27, 28, 29, *R v Walters* (1688), 12 State Tr 114, 122, *R v Byron (Lord)* (1765), 10 State Tr 1177. If during a fight without deadly weapons one of the parties snatches up such a weapon and kills the other, this is manslaughter only (*R v Snow* (1776), 1 Leach, 151, *R v Taylor* (1771), 5 Burr 2793, Lord Mansfield, C J, and see the prisoner intended from the first to use the deadly weapon (*R v Whiteley* (1829), 1 Lew C C 173, BAYLEY, J, *R v Aressal* (1824), 1 C & P 437, PARK, J, and see *R v Rankin* (1803), Russ & Ry 43). As to what killing during a sudden quarrel or during fighting amounts to murder, see p 578, *ante*.

(g) *R v Canniff* (1840), 9 C & P 359, PATIESON, J.

## § 1180

Acts  
involving  
bodily  
injury.

Prize fight.

**1180** Amicable contests in wrestling or boxing are not unlawful, and a person who unintentionally causes the death of another in the course of such a contest is not guilty of culpable homicide (*h*), but a prize fight, or any contest either for money or otherwise in which the lives or health of the combatants are endangered, or in which the intention is to continue the contest until one of them is disabled or subdued by violent blows, is illegal, and if death results, the survivor and those who are present and encourage the fight are guilty of manslaughter (*i*)

Lawful  
games

**1181** Where a person accidentally kills another while playing at a lawful game which is not attended with apparent danger to life, and he is not actuated by any malicious motive or intention, or acting in a manner which he knows to be likely to produce death or injury, or indifferent whether death is or is not caused, the act causing the death is not criminal (*k*)

Negligence.

**1182** A person upon whom the law imposes any duty (*l*), or who has taken upon himself any duty, tending to the preservation of

(*h*) *R v Ganniff* (1840), 9 C & P. 359, *R v Young* (1866), 10 Cox, C C 371, *BRAMWELL, J*

(*i*) *Ibid*, *R v Hargrave* (1831), 5 C & P 170, *R v Murphy* (1833), 6 C & P 103, *LITTLEDALE, J*, *R v Orton* (1878), 14 Cox, C C 226, C C R, *R v Coney* (1882), 8 Q B D 534, 549, 551, C C R

(*k*) *Frost* 209 260, 1 Hawk P C, c 11, ss 6 7, *R v Bradshaw* (1878) 14 Cox, C C 80, *BRAMWELL, J*, *R v Moore* (1898), 11 T L R 229, *HAWKINS, J*. The rules of a game will not make lawful that which is in itself unlawful, nor, on the other hand, is a person guilty of manslaughter merely because he may have broken the rules (*ibid*). Shooting at a mark or otherwise is a lawful recreation, but a person who shoots without taking proper precautions to avoid injury and so kills another is guilty of manslaughter (*R v Salmon* (1880), 6 Q B D 79, C C R)

(*l*) The non-contractual duties imposed by law are either statutory duties or those which arise at common law out of the position in which persons stand towards each other or towards the public

With regard to the care necessary in the use of all dangerous things and in the conduct of all operations which, if carelessly conducted, may cause injury or death, such as riding, driving and navigation, the rule is that if one man is near to another, a duty lies upon him not to do that which may cause a personal injury to the other (*Haven v Pender* (1883), 11 Q B D 503, C A, *Le Lacore v Gould*, [1893] 1 Q B 491, C A, *per Lord Esher, MR*, at p 497, and *per Bowen J*, at p 502)

The following are cases of manslaughter owing to negligent driving and riding — *R v Walker* (1824), 1 C & P 320 (where the deceased was drunk), *R v Murray* (1802), 5 Cox, C C 509 (streets unusually crowded), *R v Great* (1834), 6 C & P 629 (where the driver was near-sighted and should therefore have exercised more than usual care), *R v Timmins* (1836) 7 C & P 499 (omnibuses racing), *R v Mastin* (1834), 6 O & P 396 (prisoner and deceased were riding and said to be racing), *R v Swindall* (1846), 2 Car & Kn 230 (racing to furious driving), *R v Dalloway* (1847), 2 Cox, C C 273 (where the accused was driving a cart without holding the reins, a child ran across the road and was killed, *ERLE, CJ*, directed the jury not to convict if they thought prisoner could not have prevented the death, if he had been holding the reins), *R v Jones* (1870), 11 Cox, C C 544 (contributory negligence, see p 586, *post*), *R v Taylor* (1840) 9 C & P 672 (negligent navigation of river or at too great speed), *R v Spence* (1846), 1 Cox, C C 352 (liability of pilot), *R v Allen* (1835), 7 C & P 153, *R v Green* (1835), *ibid*, 156 (liability of captain), *R v Williamson* (1844), 1 Cox, C C 47 (overloading and mismanagement of boat)

The following are cases of negligence in the use of a weapon or other dangerous thing likely to cause death in an improper place or without taking

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injury

proper precautions to avoid injury — *R v Salmon* (1880), 6 Q B D 79, C C R. (firing a long range rifle in a field near roads and houses held to be manslaughter, *secus* where a gun was fired in the ordinary course by an artilleryman at a target under the direction of the prisoner, his superior officer, in a place not obviously improper, see *R v Hutchinson* (1864), 9 Cox, C C 555, BYLES, J.), *R v. Campbell* (1869), 11 Cox, C C 323 (firing a gun at deceased, the jury apparently believing that prisoner did not know it was loaded), *R v Jones* (1874), 12 Cox C C 628 (where LUSH, J. directed the jury that if the prisoner pointed the gun at deceased without examining whether it was loaded or not, and it happened to be loaded and death resulted, he was guilty of manslaughter but if he had tried the gun with a rammer or otherwise and had reason to believe that it was not loaded, it would probably not have been manslaughter, see Post 263), *R v Weston* (1879), 14 Cox, C C 346, 352 (gun levelled by a poacher at a gamekeeper, but, as the jury found, without the intention of discharging it) *R v Archer* (1888), 1 F & F 351 (where during a struggle for a loaded gun, to the possession of which prisoner was entitled, it went off, and Lord CAMPBELL, C J, directed a verdict of guilty on the ground that the prisoner had no right to take the gun by force), *R v Skeet* (1866), 1 F & F 931 (a similar case, but deceased, a gamekeeper, was entitled to take the gun), *R v Burton* (1721), 1 Stra 181 (firing a pistol in a street) *R v Carr* (1832), 8 C & P 163 (negligent manufacture of a cannon or gun)

The following are cases of negligence with regard to railway trains etc. — *R v Frame* (1864), 4 F & F 105, 111 (where death occurred through a railway collision, and WILLES, J. held that an inferior officer, acting honestly, was justified in obeying the directions of a superior which did not appear to him at the time to be improper or contrary to law), *R v Gray* (1865), 4 F & F 1098 (where a fireman was killed in a collision, but there was no evidence whether he or the accused, who was the driver, was looking out for signals, and WILLES, J. directed an acquittal), *R v Langley* (1848), 3 Cox, C C 191, *R v Birchall* (1866), 4 F & F 1087 (contributory negligence, as to this case, see p 586, note (c) post), *R v Lillott* (1889), 16 Cox, C C 710 (where prisoner was a guard and there was no sufficient evidence of gross negligence) *R v Henge* (1865), 4 F & F 504, *R v Smith* (1869), 11 Cox C C 210 (where LUSH, J. held that the prisoner, who was a servant of the owner of a private mining tramway and was employed by the owner to watch a public crossing which there was no statutory obligation upon the owner to have so watched, owed no duty to the public and was not punishable criminally for negligence in watching which resulted in the death of a person crossing the line, and see *R v Pittwood* (1902), 19 T L R 37, WRIGHT, J.)

The following are cases of negligence with regard to machinery — *R v Gregory* (1860), 2 F & F 153 (explosion on ship owing to inefficient valve), *R v Stokes* (1850), 4 Cox, C C 449 (leaving incompetent person in charge of colliery machinery, compare *R v Hilton* (1838), 2 Lew C C 214, where the prisoner had, contrary to his duty, left an engine unattended, another person started it and was unable to stop it thus causing the death of deceased, and ALDERSON, B. directed an acquittal on the ground that the death was not the consequence of the prisoner's act but of that of the person who started the engine), *R v Haines* (1817), 2 Car & Kir 268 (neglecting ventilation of mine) *R v Hughes* (1857), 7 Cox, C C 301, C C R. (omission to place a cage over shaft of mine)

There is a duty upon workmen and others who throw rubbish etc., or all it to fall from a height, not to endanger the lives of persons who may reasonably be expected to be in a place of public resort below. If they throw down such things without giving a sufficient warning which is likely to be heard, they are guilty of manslaughter, see 1 Hale P C 472, 473, Post 262, *R v Hall* (1664), Kel 40, *R v Fenton* (1830), 1 Lew C C 179 (throwing stones down a mine), *R v Rigmurdon* (1833), 1 Lew C C 180 (where death was caused by casks which had been insufficiently secured falling into the road)

If a man having a horse or other animal which he knows to be so vicious as to be dangerous turns it out into a place where there are paths on which to his knowledge people are likely to be, and the animal kills such a person, the owner is guilty of manslaughter (*R v Dant* (1865), 14 & C 567,

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and see *R v Franklin* (1883), 15 Cox, C C 163, compare *Lowery v Walker* (1909), 25 T L R 608

For other cases of manslaughter arising out of a duty imposed by law to do or not to do certain things see also *R v Franklin* (1883), 15 Cox, C C 163, *R v Bruce* (1847) 2 Cox C C 262 (causing death by rough play with a third person, which was held by EPLE, J, not to be manslaughter), *R v Sullivan* (1836), 7 C & P 641 (causing a cart to upset), *R v Martin* (1827) 3 C & P 211 (giving a very young child a considerable quantity of spirits to drink, see now Children Act, 1908 (8 Edw 7, c 67), s 119), *R v Packard* (1841), Car & M 236, *R v Kempson* (1893), 28 L Jo 477 (where causing death by selling diseased meat was held to be manslaughter), *R v Wild* (1837), 2 Lew C C 214 (where death was caused by kicking out a trespasser) *R v Errington* (1848), 2 Lew C C 217 (where the accused set fire to straw intending only to frighten and death ensued)

A person who has the charge or care of a child or young person under the age of sixteen, and who by neglecting to provide it with proper medical aid causes or hastens its death, is guilty of manslaughter (*R v Downes* (1875), 1 Q B D 25, (C C R)). It was doubtful whether at common law a parent who caused his child's death by neglecting to supply medical aid upon the ground that it was against his religion to do so was guilty of manslaughter (see *R v Wagstaffe* (1868), 10 Cox, C C 530, WILLES, J). But in *R v Downes, supra*, the court held that by the Poor Law Amendment Act, 1868 (31 & 32 Vict c 122), s 37, the duty of supplying medical aid was cast upon the father, and that if death resulted from his neglect of that duty he committed manslaughter. That statute is now repealed but the section in question is re-enacted in a wider form by the Children Act, 1908 (8 Edw 7, c 67), s 12. There must be affirmative proof that the death would not have occurred if such aid had been supplied (*R v Morby* (1882), 8 Q B D 571, C C R). In *R v Senior* [1899] 1 Q B 284 291, C C R, it was suggested by the court that the guilt of the parent might depend upon whether he had the necessary means to obtain the medical aid, this is, however met by s 12 (1) of the Children Act, 1908 (8 Edw 7, c 67), which requires him in such a case to take the necessary steps to procure medical aid under the Poor Law Acts, see also *R v Cook* (1898) 62 J P 712, BIGHAM, J. As to the duty of a mother to obtain such assistance during her confinement as may preserve the life of her child where she has the means of procuring such assistance, see *R v Viddell* (1850) 5 Cox, C C 275, *R v Handley* (1874), 13 Cox, C C 79, *R v Izod* (1901), 20 Cox C C 690. And see *R v Jones* (1901), 19 Cox, C C 678.

There is a common law obligation, the neglect of which in such a way as to injure health is in itself a misdemeanour (*R v Friend* (1802) Russ & Ry 20, and see p 623, *post*), to provide sufficient food, clothing, and bedding to any infant of tender years unable to provide for and take care of itself, whether it be the child, apprentice, or servant whom a person is obliged by duty or contract to provide for, and by the Children Act, 1908 (8 Edw 7, c 67), s 12, *supra* (see further as to this Act, p 624 *post*), the obligation is extended to all persons who have the custody, charge, or care of a child (as to "custody" see *R v Connor*, [1908] 2 K B 26). If death results from a neglect of this legal obligation the person guilty of the neglect commits manslaughter, see *R v White* (1848), 1 Don 356 (exposure of child), *R v Walters* (1841), Car & M 164 (exposure), *R v Conde* (1867), 10 Cox, C C 547 (neglect), *R v Bubb* (1850), 4 Cox C C 455. As to the duty of the person having charge of the child to apply for Poor Law Relief if he is unable to provide for it, see Children Act, 1908 (8 Edw 7, c 67), s 12, see also title INFANTS AND CHILDREN. If an adult who has the free control of his actions and is able to take care of himself voluntarily remains in the service of a master or under the charge of a person who does not supply him with sufficient food, the latter is not criminally responsible, if death ensues, but it is otherwise if the adult is reduced to such a state of body and mind as to be helpless and unable to take care of himself (*R v Smith* (1865), Le & Ca. 607, see also *R v Shepherd* (1862), Le & Ca 147). As to a husband's responsibility for the death of his wife to whom he makes a separate allowance on account of his refusal to give her shelter, see *R v Plummer* (1844) 1 Car & Kir 600. A relieving officer who neglects or unjustifiably refuses to relieve a destitute person is

life (*m*), and who grossly neglects to perform that duty or performs it with gross negligence and thereby causes the death of another person, is guilty of manslaughter (*n*). What amount of negligence is to be regarded as gross is a question of degree for the jury, depending on the circumstances of each particular case (*o*). The law does not require the utmost caution that can be used, it is sufficient if reasonable precaution, and what is usual and ordinary in such cases, be taken (*p*).

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injury.

To render such a person guilty of manslaughter the negligence must have been the direct and immediate cause of the death (*q*), and

Negligence  
must be  
personal.

guilty of manslaughter, if the latter dies in consequence of such refusal (*R v. Curtis* (1865), 15 Cox, C C 746, HAWKINS, J.)

A person who undertakes the charge of one who is helpless, either from infancy, old age, lunacy, or other infirmity, is guilty of manslaughter if the death of the latter is caused by his culpable neglect (*R v. Marriott* (1838), 8 C & P 425, PARTFSON, J., *R v. Nicholls* (1875), 13 Cox, C C 75, BRETT, J., *R v. Instan*, [1893] 1 Q B 400, C C R.)

(*m*) A person who, whether he be a medical man or not, deals with dangerous medicines or undertakes a dangerous operation is bound to act with proper and reasonable skill and caution, and if by reason of want of such skill and caution death is occasioned he is guilty of manslaughter, but he is not responsible criminally for a mere error in judgment, see *R v. Van Butchell* (1820), 3 C & P 629, *R v. Williamson* (1807), 3 C & P 630, *R v. Spiller* (1832), 5 C & P 333, *R v. Simpson* (1829), 1 Lew C C 172, 262, *R v. Ferguson* (1840), 1 Lew C C 181, *R v. Leaymond* (1828), 1 Lew C C 169, *R v. Long* (1831), 4 C & P 398, 423, *R v. Webb* (1854), 2 Lew C C 196, *R v. Spilling* (1838), 2 Mood & R 107, *R v. Crick* (1859), 1 F & F 519, *R v. Cook* (1859), 1 F & F 521, *R v. Bull* (1800), 2 F & F 201, *R v. Markuss* (1861), 4 F & F 366, *R v. Chamberlain* (1867), 10 Cox, C C 486, *R v. Spencer* (1867), 10 Cox, C C 525, *R v. Noakes* (1866), 4 F & F 920 (error of chemist in making up medicine).

(*n*) Stephen, Digest of the Criminal Law, 6th ed., p. 169, art. 212, see also Stephen, General View of Criminal Law, 2nd ed., p. 76, *R v. Leaymond* (1828), 1 Lew C C 169, BAYLEY, J.

(*o*) Stephen, Digest of the Criminal Law, 6th ed., p. 169, art. 252, *R v. Markuss* (1861), 4 F & F 366, 386, WILKES, J., *R v. ...* (1866), 4 F & F 920, BRETT, J. Many views have been expressed, though mostly in civil cases, as to what constitutes "gross negligence." It has been said to be the same thing as "negligence with the addition of a vituperative epithet" (*Wilson v. Brett* (1843), 11 M & W 113, 115, ROBERTS, B.). In *Cashill v. Wright* (1856), 6 L & R 891, 899, ERLE, J., said that the legal meaning of gross negligence is greater negligence than the absence of the ordinary care which under the circumstances a prudent man ought to have taken, such a degree of negligence as excludes the lowest degree of care, and which is said to amount to *dolus*. A higher degree of negligence is required to convict a person of manslaughter than to establish civil liability against him (*R v. Noakes*, *supra*; *R v. Doherty* (1857), 16 Cox, C C 306, 309, STEPHEN, J.). The mere fact that the death was caused by a civil wrong committed by the accused is not sufficient to establish a case of manslaughter (*R v. Franklin* (1883), 15 Cox, C C 163, FIELD, J., compare *R v. Lenton* (1830), 1 Lew C C 179). In *R v. Williamson* (1807), 3 C & P 630, where a man midwife was indicted for manslaughter of a patient, Lord ELLENBOROUGH, C J., directed the jury that to substantiate the charge the prisoner must have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention, see also *R v. Long* (1831), 4 C & P 398, 423, *R v. Nicholls* (1875), 13 Cox, C C 75, BRETT, J., *R v. Elliott* (1869), 16 Cox, C C 710 (Ir.), O'BRIEN, J.)

(*p*) FOST. 264, *R v. Rigmanton* (1833), 1 Lew C C 180

(*q*) *R v. Pocock* (1851), 17 Q B 34, where road trustees liable to repair a road were held by the Court of Queen's Bench not chargeable with manslaughter, a person having been killed in consequence of their neglect to make a contract for the repair of it (*R v. Ledger* (1862), 2 F & F 857).

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there must have been personal misconduct or personal negligence on the part of the accused (r), he is not responsible criminally if the death was directly caused in his absence by the negligence of his servants or others (s)

It is no defence that the death was caused by the negligence of others as well as of the prisoner, if death be occasioned by the act or default of several they are all guilty of manslaughter (a), but if the particular negligence imputed to the prisoner was not the proximate and efficient cause of the death, he cannot be convicted (b)

**Contributory**  
**negligence**

**1183** If the prisoner's negligent act or omission was the proximate and efficient cause of death, the fact that the deceased was himself negligent and so contributed to the accident or other circumstances by which the death was occasioned does not afford a defence to an indictment for manslaughter (c)

(in) *Justifiable Homicide*

**Justifiable**  
**homicide**

**1184** Homicide is justifiable (1) where the proper officer, in conformity with the sentence of the law, executes a person legally condemned to death (d), (2) where an officer of justice or anyone acting in his aid, or a person legally entitled to detain a person as a prisoner, lawfully kills one who resists or is attempting to escape (e), (3) where the homicide is committed in self defence or in prevention of a forcible and atrocious crime

**Resistance to**  
**force**

**1185** Where a forcible and violent felony is attempted upon the person of another, the party assaulted, or his servant, or any other person present, is entitled to repel force by force, and, if necessary, to kill the aggressor (f)

(r) *R v Allen* (1835), 7 C & P 153, 156, AIDERSON, B, and PARKE, J, *R v Green* (1835), 7 C & P 156

(s) *R v Bennett* (1858), Bell, C C 1, where the accused had unlawfully kept in his house a quantity of fireworks, which, through the negligence of his servants, were set on fire, and thus caused the death of the deceased, and it was held that the accused could not be convicted of manslaughter

(a) *R v Haimes* (1847), 2 Car & Kir 368, MAULE, J, *R v Benge* (1865), 4 F & F 504 509, PIGOTT, B, *R v Salmon* (1880), 6 Q B D 79, C C R

(b) *R v Ledger* (1862), 2 F & F 857, ERLE, CJ, *R v Bennett*, *supra*

(c) *R v Longbottom* (1849), 3 Cox C C 439, ROLFE, B, *R v Walker* (1824), 1 C & P 320 GARROW, B (where deceased was intoxicated), *R v Swindall* (1846), 2 Car & Ku 230, POLLOCK, CB, *R v Hutchinson* (1864), 9 Cox, C C 555, 557, BYLES J, *R v Jones* (1870), 11 Cox, C C 544 LUSH, J *R v Kew* (1872) 12 Cox, C C 355, BYLES J, compare *R v Waters* (1834), 6 C & P 328 The dictum of WILLES, J in *R v Birchall* (1866), 4 F & F 1087, that a man was not criminally responsible for negligence for which he would not be responsible in an action, was expressly disapproved by LUSH, J, in *R v Jones supra*, and has not been followed. But inasmuch as both criminal and civil liability in cases of negligence arises from the fact that the person liable is under a duty to do or not to do a certain thing, it is true, if cases of contributory negligence are excepted, that where there is no civil liability, there can be no criminal responsibility. It does not, of course, follow that in every case where there is a civil liability to pay damages the person so liable may also be convicted of manslaughter inasmuch as a higher degree of negligence is necessary to constitute the crime than to fix the negligent person with a civil liability

(d) See p. 575, *ante*

(e) See p. 575, *ante*

(f) Offences against the Person Act, 1861 (24 & 25 Vict c. 100), s. 7, 1 Hale,

There must be a reasonable necessity for the killing, or at least an honest belief based upon reasonable grounds that there is such a necessity (*g*). The act causing death is only justifiable if it is done to protect the person doing it or some other person from serious violence, or from a reasonable apprehension of it (*h*).

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bodily  
injury.

It is not lawful to take the life of a person who is committing a larceny or other felony without violence or threats (*i*), or a simple assault (*h*), or only a misdemeanour without violence (*l*).

A woman is justified in killing a man who is attempting to ravish her (*m*).

**1186** The owner of a dwelling-house, or any of his servants or lodgers, or any other person within the house, is justified in using force towards a person who is manifestly attempting to burn it, or to commit a burglary there, or to invade and enter it by violence, if the owner etc. in the use of such force kills such person he does not commit any crime (*n*).

Defence of  
dwelling-  
house etc

A person lawfully defending himself or his habitation is not bound to retreat or to give way to the aggressor before killing him, he is even entitled to follow him and to endeavour to capture him, but if the aggressor is captured or is retreating without offering resistance and is then killed, the person killing him is guilty of murder (*o*).

Indictment.

(1v) *Excusable Homicide*

**1187** Killing by misadventure or misfortune without culpable negligence is excusable, and is subject to no punishment or forfeiture (*p*).

Excusable  
homicide.

(v) *Indictment for Murder or Manslaughter*

**1188** In an indictment for murder or manslaughter or for being accessory thereto it is not necessary to set forth the manner in which or the means by which the death was caused, it is sufficient

Indictment.

P C 484, Fost 274, 1 Hawk P C, c 10, s 21, R v Pull (1839) 9 C & P 22. VAUGHAN J, R v Symondson (1896) 60 J P 645, KIRKBY, J

(*g*) See R v Rose (1884), 15 Cox, C O 510, LOUIS, J

(*h*) R v Smith (1837), 8 C & P 160. R v Weston (1879), 14 Cox, C C 316, 351, COCKBURN, C J, R v Knock (1877) 14 Cox, C C 1, LINDLEY, J, R v Symondson, *supra*. As to self defence, see R v Carman Deane (1909), 2 Cr App. Rep 75

(*i*) R v Scully (1821), 1 C & P 319 GARIOH, B, 1 East, P C 273

(*k*) R v Bull (1839), 9 C & P 22, VAUGHAN, J, 1 Hale, P C 488

(*l*) 1 Hale, P C 486, 1 East, P C 272, see R v Dudson (1850), 2 Den 33

In defence of property against a person who is seeking to take it from him by a trespass the owner is justified in beating the trespasser to make him desist, but if in beating him he kills him, it is manslaughter (1 Hale, P C 485, 486)

(*m*) 1 Hale, P C 485, Fost 274, 1 Hawk P C, c 10, s 21. The same will apply to a forcible attempt to commit sodomy (1 Hawk P C, c 10, s 21, n.)

(*n*) 1 Hale, P C 487, Fost 273, 1 Hawk P C, c 28, s 21, R v Meade (1823), 1 Lew O C 184, HOLROYD, J

(*o*) Or perhaps of manslaughter, if the blood be still hot (Fost 273, 1 East, P C 293), see, however, as to the necessity of retreating before giving a fatal blow, R v Smith (1837), 8 C & P 160, 162, BOSANQUET, J, and p 600, *post*

(*p*) Offences against the Person Act 1861 (24 & 25 Vict c 100), s 7, 1 Hale, P C 492, Fost 264, 282. As to killing by correction, see p 581, *ante*, in games and sports, p 582, *ante*, by the use of dangerous weapons, p 582, note (*l*), *ante*, in riding and driving, p 592, note (*l*), *ante*, in the commission of a crime, p 579, *ante*

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involving  
bodily  
injuryName of  
deceased

in an indictment for murder to charge that the accused did feloniously, wilfully, and of his malice aforethought kill and murder the deceased, and in an indictment for manslaughter to charge that he did feloniously kill and slay the deceased (q)

The name of the deceased must, if it is known or can be ascertained with reasonable diligence, be stated in the indictment, if it cannot be so ascertained the deceased must be described as "a person to the jurors aforesaid unknown" (r)

Neither murder nor manslaughter can be tried at quarter sessions (s)

## (vi.) Evidence

Evidence  
corpus delicti

**1189** Where no body or part of a body has been found which is proved to be that of the person alleged to have been killed, an accused person should not be convicted of either murder or manslaughter, unless there is evidence either of the killing or of the death of the person alleged to be killed. In the absence of such evidence there is no onus upon the prisoner to account for the disappearance or non-production of the person alleged to be dead (t)

Circum-  
stantial  
evidence

**1190** In murder, as in other criminal cases, a jury may convict on purely circumstantial evidence, but to do this they must be satisfied not only that the circumstances were consistent with the prisoner having committed the act, but also that the facts were such as to be inconsistent with any other rational conclusion than that he was the guilty person (a)

## Malice

**1191** On an indictment for murder evidence of the existence of a bad feeling between the parties, or of former threats of violence by the prisoner against the deceased, or of other attempts made by him on the life of the deceased is admissible to prove malice (b)

Similar  
murders.

Evidence showing the commission by the accused of other similar murders either before or after the death which is the subject of the indictment, although inadmissible for the purpose of showing that the accused was a person likely from his criminal conduct or character to be guilty of the offence for which he is being tried, may

(q) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 6. These provisions also apply to a coroner's inquisition (*R v Ingham* (1861), 5 B & S 257)

(r) *R v Clark* (1818) Russ & Ry 358, *R v Campbell* (1843), 1 Car & Kir 82, *R v Hucks* (1840), 2 Mood & R 302. A bastard child cannot be described by the name of its mother, until it has obtained it by reputation (*R v Clark*, *supra*, see also *R v Smith* (1833), 6 C & P 151. *R v Hogg* (1841), 2 Mood & R 380, *R v Willis* (1845) 1 Den 80). Such a child, if unnamed, should be described as "then lately before born of the body of A B" (*R v Hogg*, *supra*), or "a certain infant female child born of the body of A B and of tender age, to wit of the age of two days and not named" (*R v Waters* (1848), 1 Den 356). And see p 335, *ante*

(s) Quarter Sessions Act, 1842 (5 & 6 Vict c 35), s 1

(t) 2 Hale P C 290, *R v Hindmarsh* (1792), 2 Leach, 569. *R v Hopkins* (1838), 8 C & P 591. Ford ABINGER, C B, *R v Churton* (1862), 2 F & F 833, ERLE, C.J., and see p 378, *ante*

(a) *R v. Hodge* (1838), 2 Lew. C C 227, ALDERSON, B, and see *R v Gardner* (1859), 1 F & F 669

(b) *R v Clewes* (1830) 4 C & P 221, *R v Hagan* (1873), 12 Cox, C C 357, ASCHIBALD, J, *R v Weston* (1879), 14 Cox, C C 346, 350, COCKBURN, C J



nevertheless be admissible to show that the act charged in the indictment was designed and not accidental, or to rebut a defence which would otherwise be open to the prisoner (c)

1192 Upon the trial of an indictment for murder or manslaughter (d) a verbal or written statement made by the deceased person whose death is the subject of the charge (e), although such statement was not upon oath and was not made in the presence of the accused, is admissible in evidence either against or for (f) the accused, provided that at the time when such statement was made the person making it had an unqualified belief, without hope, that he was about to die almost immediately (g)

The question whether the deceased had such a belief in impending

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involving  
bodily  
injury.

Dying  
declarations

(c) *R v Geering* (1849), 18 L J (M C) 215, *Porlock, C B, R v Gurner* (1864), 4 F & F 546, *Wilkes, J, R v Cotton* (1873), 12 Cox, C C 400, *Archibald, J, R v Roden* (1874), 12 Cox, C C 630, *Latham, J, R v Hersom* (1878), 14 Cox, C C 40, *Jervis, J* (where the death proved was subsequent to the murder alleged in the indictment), *Makin v A-G for New South Wales*, [1894] A C 57, 65, P C The ruling of *Martin, B* and *Widd, B*, in *R v Winslow* (1860), 8 Cox C C 397, to the contrary effect, is inconsistent with *R v Geering supra*, *R v Flannagan* (1881), 15 Cox, C C 403, *Butt, J, Makin v A-G of New South Wales, supra*, and *R v Bond*, [1906] 2 K B 389, 402, and cannot be treated as law In a case of manslaughter from negligence *Maule, J*, ruled that evidence of other instances of either the prisoner's negligence or of his carefulness, under other similar circumstances was inadmissible (*R v Whitehead* (1815) 3 Car & Kir 202, see, however, *R v Williamson* (1807), 3 C & P 635, where Lord *Ellenborough, C J*, appears to have admitted evidence on behalf of a man midwife of his skill and attention on other occasions) It is submitted that in cases of manslaughter evidence of this kind should be confined to the prisoner's general character for skill and diligence, though such evidence may be given by persons whom he may have attended (see *R v Long* (1830) 4 C & P 398 401, where twenty-nine witnesses were allowed by *Park, J*, to give evidence that they had been patients of the prisoner and were satisfied with his skill and diligence) See also p 380, *ante*

(d) And only in such cases (*R v Mead* (1824), 2 C & C 605, *R v Hutchinson* (1822), *ibid* 608, n, *R v Hind* (1830), 4 C & C 233, *R v Newton* (1839), 1 F & F 641, *R v Hind* (1860), 8 Cox, C C 300, C C R) As to the circumstances under which the evidence of a witness who is dangerously ill may be taken before a magistrate and in the presence of the accused under the Criminal Law Amendment Act, 1867 (80 & 81 Vict c 35), see pp 327, 366 *ante* A deposition irregularly taken, and therefore inadmissible under that section, may nevertheless be admissible as a dying declaration (*R v Clarke* (1859), 2 F & F 2)

(e) See *R v Mead* and the other cases cited in the last note An exception was, however, made in *R v Baker* (1837), 2 Mood and R 53, where, two persons having been poisoned by poison administered on one occasion, upon the trial of the prisoner for the murder of one of them, *Griffin, J*, admitted a dying declaration made by the other

(f) *R v Scarfe* (1836), 1 Mood & R 551, (OLDRIDGE, J

(g) *R v Jenkins* (1869), L R 1 C C R 187, 192, 193 In this case *Kelly, C B*, cited and adopted observations made by judges in the three following cases - *R v Woodcock* (1789) 1 Leach, 500, *Hayes, C B*, "every hope of this world gone", *R v Peel* (1860), 2 F & F 21, *Wilkes, J*, "settled hope less expectation of death", *R v Hayward* (1833), 6 C & P 157, *Tindal, C J*, "any hope of recovery, however slight, renders the evidence of such declaration inadmissible" The following are authorities prior to *R v Jenkins, supra* - *R v Welbourn* (1792), 1 Leach, 503, n, *R v Dingler* (1791), 2 Leach, 561, *R v Tinchler* (1781), 1 East, P C 354, *R v Qualter* (1854), 6 Cox, C C 351, *R v Fagant* (1835), 7 C & P 238 where the declaration was held to be inadmissible, because at a later period the deceased showed some hope of recovery See

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**Acts**  
**Involving**  
**bodily**  
**Injury.**

death as to make a declaration admissible as a dying declaration is for the judge, and not for the jury (*h*)

A statement made in the first instance under such circumstances as to render it inadmissible as a dying declaration may be admitted as evidence, if it is afterwards repeated by the deceased or by some other person at his request and assented to by him under circumstances which would have rendered it admissible, if it had been then made for the first time (*i*)

It is no objection to the admissibility of a dying declaration that it is made in answer to leading questions, though that fact may affect its weight as evidence (*h*)

also *R v Taylor* (1848), 3 Cox, C O 84, and *R v Hubbard* (1881), 14 Cox, C O 565 in which last case HAWKINS, J, declined to exclude the declaration, because the deceased afterwards thought she would recover, *R v Errington* (1839) 2 Low, C C 118, *R v Meeson* (1840), 9 O & P 418, *R v Thomas* (1845), 1 Cox, C O 52, *R v Brooks* (1813), 1 Cox, C O 6, *R v Christie* (1821), Curington, Criminal Law 232, *R v Crockett* (1831), 4 C & P 544, *R v Ashton* (1837), 2 Low C O 147, *R v Spilsbury* (1835), 7 C & P 187, *R v Braney* (1807), 7 Cox, C C 209, C O R, *R v Whitworth* (1858), 1 F & F 382, *R v Mahay* (1868), 11 Cox, C C 149, *R v Forester* (1866), 4 F & F 807. The following are later cases than *R v Jenkins supra* — *R v Onnan* (1851), 15 Cox, C O 1, LUSH, J, (where the statement of the deceased that she was sure she was going to die was held insufficient to render the declaration admissible), compare *R v Goddard* (1882), 15 Cox, C C 7 (where the deceased said "I am dying, look to my children," and her declaration was admitted by HAWKINS, J), *R v Cowle* (1907), 71 J P 152 (where the deceased said "I'm dying" and the declaration was admitted by GRAMHAM, J), and *R v Abbott* (1903), 67 J P 151 (where the deceased when in great pain said several times, "I am dying" but KENNEDY, J, refused to admit the declaration), see also *R v Smith* (1887), 16 Cox, C C 170, *R v Mitchell* (1892), 17 Cox, C C 503, *R v Gloster* (1888), 16 Cox C C 471, approved in *R v Perry* (1909), 25 T L R 676. In *R v Edmunds* (1909), 25 T L R 608, C C A, it was held that the deposition of a woman taken when she was expected to recover, and on a charge of manslaughter, was properly admitted at the trial of the prisoner for the murder of the woman. With regard to the dying declaration of a child in *R v Pike* (1829), 3 C & P 598, PARK, J, refused to admit that of a child of four years of age upon the ground that it was impossible that it could have had that idea of a future state which is necessary to make such a declaration admissible. But a dying declaration of a child of ten years of age was held to have been rightly admitted in *R v Perkins* (1840), 2 Mood C C 135.

The fact that the deceased believed that his death was impending may be shown by statements made by him at the time, or by evidence that his physical condition or the nature of the wounds inflicted upon him was such that he must have so believed (*R v Woodcock* (1789), 1 Leach, 500, *R v Johns* (1790), 1 Leach, 504, n, *R v Bonner* (1834), 6 C & P 386, *R v Clary* (1862), 2 F & F 850, *R v Morgan* (1875), 11 Cox, C C 337). In the last-mentioned case, however, DENMAN, J, appears to have been not without doubt as to the admissibility of a declaration which depended only upon evidence of the latter class. See also *R v Redmfield* (1879), 14 Cox, C C 341, 343, 344, where COCKBURN, C J, declined to presume a woman's knowledge of impending death, although her throat was cut and she died in a few minutes after making the declaration, and see *R v Curtis* (1903), 21 T L R 87.

(*h*) *R v Hicks* (1816), 1 Stark 521, 523, *R v Goddard* (1882), 15 Cox, C O 7, HAWKINS, J, *R v Whitmarsh* (1898), 62 J P 711, BIGHAM, J.

(*i*) *R v Steele* (1872), 12 Cox, C C 165, LUSH, J.

(*h*) *R v Bagant* (1835), 7 O & P 238, *R v Smith* (1865), Le & Ca 607, 612, C O R. But in *R v Mitchell* (1892), 17 Cox, C C 503, CAVE, J, refused to admit a written declaration in narrative form, signed by the deceased and taken down at the time from her answers to questions, on the ground that both questions and answers ought to have been written down verbatim, and this ruling was followed by BRUCE, J, in *R v Smith* (1901), 65 J P 426. The

The lapse of a considerable interval between the making of the declaration and the death of the deceased does not render it inadmissible, if at the time when it was made he had the conviction of immediately impending death (*l*)

A dying declaration by a person who is by law incompetent as a witness is inadmissible (*m*)

Nothing is evidence in a dying declaration which would not be evidence if the party were a witness, what the declarant says as to facts is receivable, but not what he says as to matters of opinion (*n*)

**1193** Statements by the deceased made immediately upon the occurrence which caused the death, but not under such circumstances as would render them admissible as dying declarations, may be admitted in evidence as part of the *res gestæ*, but the extent to which they are so admissible is doubtful (*o*)

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bodily  
injury.

Statements  
by deceased

ulings of CAVF, J, and BRUCE, J in the two last-mentioned cases appear to conflict with *R v Smith*, *supra*, as the declaration in that case was obtained by questions but was reduced into writing in narrative form (see pp 612 613 of the report). In *R v Bottomley* (1903), 115 L T Jo 88, LAWRENCE J, dissented from *R v Mitchell* (1892) 17 Cox, C C 503. It is submitted that where a written declaration is for any reason of this kind inadmissible, the writer of it, in giving evidence, may use it to refresh his own recollection of the questions which were asked and of the answers given by the deceased, although, if the declaration itself would be evidence it must be put in and secondary evidence of its contents cannot be given (*R v Troutner* (1722), 12 Vin Abr 119, *R v Gay* (1850), 7 C & P 230, COKINGR, J). The fact that the deceased knew of the near approach of death need not appear from the written declaration but may be proved *alunde* (*R v Hunt* (1847), 2 Cox, C C 259, POLLOCK, C J).

(*l*) *R v Bernadot* (1869), 11 Cox, C C 316. But *l*, J (where there was an interval of three weeks), and see *R v Mosley* (1823) 1 Lew C C 79.

(*m*) *R v Drummond* (1784), 1 Leach, 337. As to what witnesses are incompetent, see p 400 *ante*.

(*n*) *R v Sellers* (1796), Carrington, Criminal Law, 23.

(*o*) In *R v Foster* (1834), 6 C & P 325 upon an indictment for manslaughter by furious driving, GURLEY, B, and PARKER, J, admitted evidence of a statement made by the deceased in the absence of the prisoner to a person immediately after the accident upon the authority of *Arson v Annand* (Lord) (1803), 6 East, 155, 191. See also *Thompson v Trevanion* (1693) Skin 402. In *R v Lunny* (1874), 6 Cox, C C 477 (1r) (a case of murder), MONAHAN, C J, admitted evidence of a statement made by the deceased to the first person who saw him after, though apparently not immediately after the blows which caused death. In *R v Indingfield* (1879), 11 Cox, C C 341 (murder), it was sought to put in evidence a statement made by the deceased who came suddenly into a room with her throat cut from a room in which she had just left the prisoner, who also had his throat cut, COKKURN, C J, refused to admit the statement as it was not part of anything done, or anything said while something was being done, but something said after the act was done, but as to this decision see 1 Taylor on Evidence, 10th ed, 412, n. In *R v Goddard* (1882), 15 Cox, C C 7 (murder), HAWKINS, J, refused to admit as part of the *res gestæ* a statement of the deceased as to who inflicted the mortal injuries upon her, although made ten minutes after they were inflicted, but he afterwards admitted the statement as a dying declaration, as the deceased had also at the same time said she was dying.

A statement made by the deceased before the injury causing the death may be admitted to prove his condition of health at the time of the statement (*R v Johnson* (1847), ALDERSON, B, *R v Gloster* (1888), 16 Cox, C C 471, 473, CHARLES, J), or where it is made in the course of the office or business of the deceased (*R v Buckley* (1873), 13 Cox, C C 293, LUSH, J, in which case the deceased was a police officer, and the statement admitted was a verbal report to

## SECT. 1

(VII.) *Verdict and Punishment*

Acts  
involving  
bodily  
injury.

Verdict.

**1194** Upon an indictment for murder the jury may convict of manslaughter (*p*), if there is anything in the evidence to rebut the *prima facie* presumption of murder (*q*)

A person tried for the murder of any child may, if acquitted of that offence, and if the facts so warrant, be convicted by the same jury of concealment of the birth of the child (*r*)

If two or more persons are jointly indicted for murder, the court may order separate trials, if the justice of the case so requires (*s*)

Punishment

**1195** The punishment for murder is death, and the offender must be executed and buried within the walls of the prison where he is confined at the time of execution (*t*)

**1196** The punishment for manslaughter is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years or a fine with or without such penal servitude or imprisonment, the offender may be required to find sureties for good behaviour (*u*)

Woman  
pleading  
pregnancy

**1197** If a woman is convicted of murder, she may, when called upon after judgment to say why execution should not follow on the judgment, plead that she is quick with child (*v*)

SUB-SECT. 2—*Suicide*

Suicide.

**1198** Suicide is self murder by a person of sound understanding and of an age sufficient to be convicted of murder. It is a felony at common law. If a coroner's jury finds a verdict of suicide in respect of any person, the coroner is to give directions for the

his superior as to where he was about to go), but not where it is a statement of intention, not made by the deceased in the course of duty (*h v Hamwright* (1875), 13 Cox, C C 171, COCKBURN, C J, and see *R v Pook* (1871), *ibid* 172 n, BOVILL (C J) nor where it is a statement as to the person by whom, or the manner in which, certain symptoms were caused (*R v Gloster, supra*) see also *R v Nicholas* (1816), 2 Car & Kir 246, 248, and *R v Horsford*, mentioned by HAWKINS, J in *R v Routland* (1898), 62 J P 459. In *R v Edwards* (1872), 12 Cox, C C 230 (murder), QUAIN, J, admitted evidence of a statement made by the deceased eight days before the murder as to threats which she said the prisoner had used towards her—*see quere*

(*p*) *R v Mackalley* (1612), 9 Co Rep 61 b, 67 b. *R v Greenwood* (1857), 7 Cox C C 404, and of the common law misdemeanor of an attempt to commit murder (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 9, and see p 393, *post*)

(*q*) *R v Maloney* (1861), 9 Cox, C C 6, BAILEY, J, *R v French* (1879), 14 Cox, C C 325

(*r*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 60, see p 598, *post*

(*s*) *R v Jackson* (1857) 7 Cox C C 357, BRAMWELL, B, where the prisoners had made statements implicating each other

(*t*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 1, 3, Capital Punishment Amendment Act, 1868 (31 & 32 Vict c 24) ss 2, 6, and see s 5 as to the holding of an inquest upon the body. As to punishment of persons under sixteen, see Children Act, 1908 (8 Edw 7, c 67), s 103, and p 420, *ante*

(*u*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s 5, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*v*) This must apparently be alleged by her, and not by her counsel (*R v Hunt* (1847), 2 Cox C C 261 FRIE, J) As to "quick with child," see Taylor, Medical Jurisprudence, 3th ed., LL, 39, and as to the plea, see p 375, *ante*.

interment of such person in a churchyard or other burial ground (c). The rites of Christian burial are not authorised to be performed on the interment of the remains of a person who has committed suicide, unless the deceased is shown to have been *non compos mentis* at the time.

An attempt to commit suicide is a common law misdemeanour (d), punishable by fine or imprisonment without hard labour.

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Acts  
involving  
bodily  
injury.

### SUB-SECT 3—Attempts to Murder

**1199** It is by statute (e) a felony to administer or cause to be administered to or to be taken by any person any poison or other destructive thing (f), or by any means whatsoever to wound or to cause grievous bodily harm to any person (g), with intent in any of such cases to commit murder. The indictment must allege what substance was administered and that it was a poison or a destructive thing (h).

Administer  
ing poison

The punishment for this offence is penal servitude for life or for

(c) Interments (folo de se) Act, 1882 (45 & 46 Vict c 19) s 4. See titles CORPERS, Vol VIII p 273, BURIAL AND CREMATION, Vol III, p 561.

(d) *R v Doodly* (1854) 6 Cox, C C 463. If the defendant was drunk at the time, his drunkenness, though no excuse in itself, is a material fact to be considered by the jury in deciding whether he really intended to destroy himself (*ibid*). Suicide is not murder within the meaning of the Offences against the Person Act, 1861 (24 & 25 Vict c 100) and the attempt to commit it is therefore triable at quarter sessions (*R v Burgess* (1852) 32 L J (M C) 55, C C R). As to an agreement or incitement to commit suicide, see p 673, *ante*.

(e) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 11, and see p 610, note (a), *post*.

(f) To constitute the administering there need not be a manual delivery to the person intended to be poisoned, it is sufficient that poison is prepared and intentionally left in a place where he would be likely to take it (*R v Harley* (1830) 4 C & P 369 PARK, J, *R v Dale* (1852) 6 Cox (C C 14, WIGHTMAN, J). If the poison is taken by some person for whom it was not intended, this is an administration to the person who has actually taken it (*R v Lewis* (1833), 6 C & P 161, GIBBY, B, *R v Michael* (1810), 9 C & P 356, AIDRAGON, B), see, however, *R v Ryan* (1839), 2 Mood & R 213, in which PARK, B, doubted the correctness of the ruling in *R v Lewis*, *supra*.

(g) As to wounding, see p 600 *post*, as to grievous bodily harm, p 601, *post*. It is not necessary that the wound should be near a vital part or of a dangerous nature likely to cause death (*R v Griffith* (1824), 1 C & P 298, PARK, J). But there must be a positive intention to murder, and it is not sufficient that if death had resulted, the prisoner would have been guilty of murder, unless he actually intended to commit that crime (*R v Truse* (1835), 3 C & P 541, PATTERSON, J, *R v Jones* (1840), 9 C & P 258).

(h) *R v Poules* (1831) 4 C & P 571. If a substance poisonous in itself is administered with intent to murder, the offence is committed, although owing to a mistake of the prisoner the quantity administered, or the form in which it is administered, is such as to render the substance innocuous (*R v Underhay* (1850) 4 Cox, C C 84, C C R). In *R v Cadman* (1825), 1 Mood (C C 114, it appears to have been held by the judges that there was no administration, unless some of the poison was swallowed, and that taking it into the mouth only is not enough to constitute an administration, but the reports of this case and the statement of PARK, J, in *R v Harley*, *supra*, as to his recollection of it do not altogether agree, and in *R v Wulford* (1898), 34 L J 116, WILLS, J, declined to follow it. In any such case also the prisoner could now be convicted of attempting to administer under s. 14, see p 694, *post*.

## SECT 1

Acts  
involving  
bodily  
injury.Infliction of  
injury with  
intent to  
murder

not less than three years, or imprisonment with or without hard labour for not more than ten years (i)

**1200** Anyone is by statute (k) guilty of a felony —

(1) Who by the explosion of gunpowder or other explosive substance destroys or damages any building with intent to commit murder (l),

(2) Who sets fire to any ship or vessel, or any part thereof or any part of the tackle, apparel, or furniture thereof, or any goods therein, or casts away or destroys any ship or vessel, with intent in any such case to commit murder (m),

(3) Who attempts to administer to or attempts to cause to be administered to or to be taken by any person any poison or other destructive thing, or to shoot at any person, or by drawing a trigger or in any other manner to attempt to discharge any kind of loaded arms (n) at any person (o), or to attempt to drown, suffocate, or strangle any person, with intent in any of such cases to commit murder, whether any bodily injury be inflicted or not (p),

(4) Who by any means other than those specified above attempts to commit murder (q)

(i) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 11 (see also as to attempting to administer poison, s 14), Penal Servitude Act, 1891 (51 & 54 Vict c 69), s 1 These offences are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 35), s 1) As to other attempts see *infra*

(k) *Ibid*, ss 12—15

(l) *Ibid*, s 12

(m) *Ibid*, s 13

(n) Guns, pistols or other arms loaded in the barrel with gunpowder or any other explosive substance, and ball, shot slug, or other destructive material, are deemed to be loaded arms within the meaning of the Act, although the attempt to discharge the same may fail from want of proper priming or from any other cause (*ibid*, s 19) A revolver loaded in some of its chambers is a loaded arm within the meaning of s 14, although when the prisoner pulled the trigger the hammer fell on an unloaded chamber (*R v Jackson* (1890), 17 Cox, C O 104, CHALLER, J) A box or can containing explosives and detonators is not a "loaded arm" within the meaning of the section (*R v Mountford* (1835), 7 O & P 242, WILLIAMS, J), but the offender will be punishable upon an indictment under s 15 (see *infra*), see as to explosions caused by such means, p 603, *post*

(o) As to attempts to shoot see p 600, *post*

(p) Offences against the Person Act 1861 (24 & 25 Vict c 100), s 14 Where the prisoner shot at a person mistaking him for another whom he intended to kill the indictment alleging the intent to be to murder the former, and the jury found that the prisoner had no intention to murder the person killed, a verdict of acquittal was entered (*R v Holt* (1836), 7 C & P 518), see also *R v Jarvis* (1837), 2 Mood & R 40, *R v Smith* (1856), 7 Cox, C O 51, C O R) The indictment may, therefore, allege only a general intent to murder

(q) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 15 The other means specified in this section only include methods of attempting to commit murder which are not *eiusdem generis* with the means mentioned in ss 11, 12, 13 and 14 (*R v Brown* (1843), 10 Q B D 381, 384 C O R) An attempt to commit suicide is not an attempt to commit murder under this section, and it remains a common law misdemeanour (*R v Burgess* (1862), L.R. & C. 258, C O R) In *R v Donovan* (1850), 4 Cox, C O 399, where a woman had been injured by jumping from a window to avoid the prisoner's violence, ALDERSON, B, held that the prisoner could not be convicted of attempting to

The punishment for any such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*a*)

SECT. 1.  
Acts  
involving  
bodily  
injury.

SUB-SECT 4—*Conspiracy to Murder*

**1201** Anyone is by statute (*b*) guilty of a misdemeanour (1) who conspires to murder any person, whether a British subject or not, and whether within the King's dominions or not, or (2) who solicits, encourages, persuades or endeavours to persuade, or proposes to any person to murder any other person, whether a British subject or not, and whether within the King's dominions or not

Conspiracy  
to murder.

The punishment is penal servitude for ten years or for not less than three years, or imprisonment with or without hard labour for not more than two years (*c*)

Where an agreement to murder is proved, it is not necessary to show that the conspirators were agreed as to the exact means of accomplishing their end (*d*)

Persons jointly indicted for this offence may be tried separately, if the court so directs, and if in such a case one is convicted the fact that the others have not yet been tried is no ground for postponing judgment upon the one convicted (*e*)

**1202** An article or letter in a newspaper may be an incitement to murder within the meaning of the Offences against the Person Act, 1861 (*f*), though no particular person be named, if the incitation is directed against the members of a particular class (*g*)

Incitement  
to murder

The communication containing the incitement or endeavour to persuade must be proved to have reached the person intended to be incited, but it is not necessary to show that his mind was affected by it (*h*). If the communication cannot be proved to have reached him, the accused may be convicted of the common law misdemeanour of an attempt to commit the crime (*i*)

murder her, unless the jury were satisfied that he intended at the time to make her jump out, see as to such cases p 572, *ante*, and the authorities there cited

(a) Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 12—15, Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(b) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 4

(c) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(d) *R v Banks* (1873), 12 Cox, C C 393, 398, QUAIN, J

(e) *R v Ahearns* (1852), 6 Cox, C C 6 C C R (11), and see pp 264, 592, *ante*

(f) 24 & 25 Vict c 100, s 4

(g) *R v Most* (1881), 7 Q B D 244, C C R, *R v Antonelli* (1900), 70 P 4, PHILLIMORE, J

(h) *R v Fox* (1870), 19 W R 109, C C R (1r), *R v Krause* (1902), 66 J P 121, Lord ALVERSTONE, CJ

(i) *R v Krause*, *supra*, and see *R v Ransford* (1874), 13 Cox, C C 9, C C R. In the case of a newspaper the production of a copy published by the accused and purchased from him or his agents is some evidence that the incitement reached persons intended to be incited (*R v McCarthy*, [1903] 2 I R 146).

## SECT. 1.

Acts  
involving  
bodily  
injury.Threatening  
to murder.SUB-SECT 5—*Threatening to Murder*

**1203** Everyone is by statute (*h*) guilty of a felony who maliciously sends, delivers, or utters, or directly or indirectly causes to be received knowing the contents thereof, any letter or writing threatening to kill or murder any person

The punishment for this offence is penal servitude for ten years or for not less than three years, or imprisonment with or without hard labour for not less than two years (*l*)

SUB-SECT 6.—*Procuring Abortion*Procuring  
abortion

**1204** It is a felony by statute (*m*) (1) for any woman with child unlawfully to administer to herself any poison or other noxious thing or to use any instrument or other means whatsoever with intent to procure her own miscarriage, or (2) for any person to administer to or cause to be taken by any woman, whether she be with child or not, any poison or noxious thing with intent to procure her miscarriage, or to use any instrument or other means with that intent

Taking  
drugs etc

**1205** If a woman takes a substance which is in fact harmless, believing it to be a noxious thing and with intent to procure her miscarriage, she is guilty of the common law misdemeanour of an attempt to procure abortion (*n*) In order to constitute the statutory offence the thing supplied or administered must be proved to be noxious (*o*)

The quantity of an otherwise noxious drug may be so small as to take the case out of the statute (*p*), and a large dose of a drug which is harmless when taken in small quantities may be a noxious thing within the meaning of the statute (*q*)

If a person procures poison for a woman with intent to procure her miscarriage, to which intent she is a party, and she does in fact take it, though in his absence, he may be convicted of the felony of causing it to be taken by the woman, and not merely of the misdemeanour of procuring it with that intent (*a*)

A woman cannot be convicted of administering poison to herself with intent to procure her own miscarriage, or of procuring poison

(*h*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 16 To put a letter containing threats to murder in a place where it is likely to be seen and read by the person to whom it is directed is a sending or uttering of the letter within the statute (*R v Jones* (1851), 5 Cox, O C 226, *per* PATTESON, J), so also is the delivery of the letter to another to be posted (*R v Girdwood* (1776), 1 Leach, 142)

(*i*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 16, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 58.

(*n*) *R v Brown* (1899), 63 J P 790, DARLING, J

(*o*) *R v Isaacs* (1862), Le & Ca 220

(*p*) *R v Perry* (1847) 2 Cox, O C 223

(*q*) *R v Cramp* (1880), 5 Q B D 307, O C R, see, however, *R v Hennah* (1877), 13 Cox, C C 547, decided under Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 24

(*a*) *R v Wilson* (1856), Dears. & B 127, *R v Farrow* (1857), Dears & B. 164.



with such intent, unless she be in fact with child. But though she be not pregnant, she may be convicted of conspiracy to procure abortion (*b*), or of aiding and abetting others in committing the felony of administering poison or some noxious thing to her with intent to procure her miscarriage (*c*).

SECT 1.  
Acts  
involving  
bodily  
injury.

To prove the intent with which the noxious thing was administered or the instrument used, evidence showing that the prisoner had on previous occasions used similar means with the avowed intention of procuring abortion, or that he or she had previously admitted having often done the same thing, is admissible (*d*).

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

**1206** Everyone is by statute (*f*) guilty of a misdemeanour who supplies or procures any noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman, whether she be with child or not.

Procuring  
noxious  
thing.

A person who supplies something which he believes to be noxious for the purpose of procuring miscarriage cannot be convicted of this misdemeanour, unless it is shown as a fact that the substance in question is noxious for that purpose (*g*). If he knows the article supplied to be harmless, he cannot be convicted of inciting the woman to commit an offence against the statute, although he knows that she will take it in the belief that it is noxious and with intent to procure abortion (*h*).

The fact that medicine supplied by the accused is followed by illness and a miscarriage is evidence that the thing supplied is noxious (*i*).

The offence of supplying a noxious drug is complete even if the intention to use it for the purpose of procuring abortion exists only in the mind of the person supplying it (*a*).

The punishment for this offence is penal servitude for not more

(*b*) *R v Whitchurch* (1890), 24 Q B D 420, C C R.

(*c*) *R v Sockell* (1908), 72 J P 428, C C A.

(*d*) *R v Bond*, [1906] 2 K B 389, 405, 417. But such evidence should be admitted with great caution. It should only be admitted where the prisoner has suggested that the administration of the drug or the use of the instrument was legitimate or accidental on his part, and not where the defence is a denial of the act itself. And proof of only one other similar case, without any special connection with the case charged in the indictment, ought not to be admitted, the object of evidence of this kind being to prove a systematic course of conduct by the prisoner in such cases and so to negative the defence that his action on the particular occasion was legitimate or accidental (*ibid*). See also pp 340, 589, *ante*.

(*e*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 58, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1).

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 62.

(*g*) *R v Isaacs* (1862), Le & Ca 220.

(*h*) *R v Brown* (1899), 63 J P 790, DARLING, J.

(*i*) *R v Holmes* (1873), 12 Cox, C C 463, 467.

(*a*) *R v Hillman* (1863), Le & Ca. 343.

SECT 1  
Acts  
involving  
bodily  
injury.

Concealment  
of birth

than five nor less than three years, or imprisonment with or without hard labour for not more than two years (b)

SUB-SECT 7.—*Concealment of Birth.*

**1207** Where a woman has been delivered of a child, it is by statute a misdemeanour (c) for any person by any secret disposition of the dead body of the child to endeavour to conceal the birth thereof, and it is immaterial whether the child died before, at, or after its birth

The maximum punishment for this offence is imprisonment for two years with or without hard labour (d)

In order to constitute this offence a woman must have been delivered of something which may properly be called a child, and not the unformed subject of a premature miscarriage (e) The child must be so far developed that in the ordinary course of events it would have had a fair chance of life when born (f)

There must be a concealment of the fact of birth, carried out by a secret disposition of the body (g), and this implies some act of concealment (h) Proof that a woman still had the body of her child in her possession, though about to dispose of it (i), or that she allowed others to take away the body, unless it was at her request or with her privity (h), or that she merely denied that she had given birth to a child (i), is not sufficient to support a conviction for concealment

There is a concealment when the child is placed where it is not likely to be found, and the most complete exposure of the body in

(b) Offences against the Person Act, 1861 (24 & 25 Vict c 100) s 59, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is triable at quarter sessions

(c) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 60

(d) *Ibid* The defendant may be fined and ordered to find sureties for good behaviour (*ibid*, s 71) This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(e) *R v Hewitt* (1866), 4 F & F 1101

(f) It has been said that although no specific limit can be assigned to the period when the chance of life begins, it may perhaps be safely assumed that, in the case of a child which has been less than seven months in the womb, the great probability is that it would not be born alive (*R v Berriman* (1854), 6 Cox, C C 388, but see *R v Colmer* (1864), 9 Cox, C C 506, where MARTIN, B., held that a foetus not bigger than a man's finger, but having the shape of a child, might be a child within the meaning of the statute) In this case the woman had been confined in the fourth or fifth month after pregnancy, and MARTIN, B., expressed the opinion (at p 507) that as soon as a foetus which had the outward appearance of a child was born, the offence of concealment of birth could be committed, and see Stephen, Digest of Criminal Law, art 256 It is submitted that the question of whether that which was concealed was "the dead body of a child" is in each case a question of fact for the jury

(g) *R v Rosenberg* (1906), 70 J P 264, where the child's body was on the bed on which defendant lay, it being covered with a petticoat, an acquittal being directed. Compare *R v Perry* (1855) Dears C C 471, where the defendant put the body under a bolster on which she put her head, the conviction being upheld

(h) *R v Derham* (1843), 1 Cox, C C 56, where it was held that the fact that the defendant had left the body in a privy where she said she had been confined was no evidence of concealment

(i) *R v Snell* (1837), 2 Mood & R 44

(k) *R v Bate* (1871), 11 Cox, C C 686, *R v Douglas* (1836), 7 C & P 644, *R v Bird* (1849), 2 Car & Kir 817, *R v Skelton* (1850), 3 Car & Kir 119.

(l) *R. v. Turner* (1839), 8 C & P 755.

a secluded place where it would not be likely to be found may be a concealment (*m*) But leaving it in a street, though it may amount to a public nuisance, is not a concealment of birth (*n*)

The secret disposition need not be in a place where it is intended finally to leave the body, a temporary place of concealment is sufficient (*o*)

The dead body must be found and identified as that of the child the attempted concealment of whose birth is alleged (*p*)

A person does not commit the offence of endeavouring to conceal the birth of a child, if such person puts it while it is still alive in a place of concealment, even though it may subsequently die (*q*), but if such person later on visits the place, and, finding the child dead, replaces the clothes or other things with which it was concealed, she commits this offence (*r*)

The offence does not consist in the concealment of the birth of a child from any particular individual, but in such a concealment as would keep the world at large in ignorance of the birth (*s*)

**1208** An indictment for concealment of birth must specify the particular act of concealment charged (*t*), and must allege that the child the concealment of whose birth is charged was dead at the time of the concealment (*a*), but need not specify whether the child died at or after birth (*b*)

It is a question of law for the judge whether there is evidence that the place where the body was put was such that the body might have been disposed of there so as to conceal it It is for the jury to say whether the body had in fact been so disposed of by the defendant, and with intent to conceal the birth (*c*)

**1209** If any person tried for the murder of a child is acquitted, the same jury which tried the prisoner may find, if it shall so appear in evidence, that the child had recently been born, and that the prisoner did, by some secret disposition of its dead body, endeavour to conceal its birth, the prisoner may then be sentenced, as if he or she had been convicted upon an indictment for concealing the birth (*d*)

(*m*) *R v Brown* (1870) L R 1 C C R 244, see also *R v Sleep* (1861), 9 Cox, C C 509, *R v Cook* (1870), 11 Cox, C C 512, *R v Rosenberg* (1906), 70 J P 264, *R v George* (1868), 11 Cox, C C 41, *R v Waterage* (1846), 1 Cox, C C 338

(*n*) *R v Clark* (1853), 15 Cox C C 171

(*o*) *R v Perry* (1855), Dears C C 471

(*p*) *R v Williams* (1871), 11 Cox, C C 684, MONTAGUE SMITH, J

(*q*) *R v May* (1867), 10 Cox, C C 448, C C R, but, according to the circumstances, the woman would be guilty of murder or manslaughter, or of cruelty to the child

(*r*) *R v Hughes* (1850), 4 Cox, C C 440, LORD CAMPBELL CJ

(*s*) *R v Morris* (1848), 2 Cox, C C 439, COLIMAN, J, *R v Hugley* (1830), 4 C & P 366

(*t*) *R v Hounsell* (1810) 2 Mood & R 292

(*a*) *R v Davis* (1829) 3 Russell on Crimes, 167

(*b*) *R v Cowhead* (1845), 1 Car & Kir 623, *R v Turner* (1839), 8 C & P 758,

(*c*) *R v Clarke* (1866), 4 F & F 1040, MARTIN, B

(*d*) Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 60 This applies although the prisoner has only been tried on a coroner's inquisition, and not upon indictment (*R v Maynard* (1812), Russ & Ry 240, where the grand jury had ignored the bill of indictment)

SECT 1.  
Acts  
involving  
bodily  
injury.

Indictment.

Verdict of  
concealment  
on trial  
for murder.

## SECT. 1.

Acts  
involving  
bodily  
injury.Wounding  
with intent  
to maim.SUB-SECT 8—*Wounding etc with intent to Maim etc*

**1210** Everyone is by statute (e) guilty of felony who by any means whatever unlawfully and maliciously wounds or causes grievous bodily harm to any person, or shoots or attempts to discharge loaded arms at any person, with intent in any of these cases to maim, disfigure or disable, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (f)

What  
constitutes  
wounding

**1211** In order to constitute a wounding there must be an injury to the person by which the skin is broken (g), the continuity of the whole skin must be severed, not merely that of the cuticle or upper skin (h) The skin severed need not, however, be external (i), but it is not sufficient to prove merely that a flow of blood was caused (k), unless there is evidence to show where the blood originally came from (l)

It is not necessary that any instrument should have been used, as injury caused for instance by a kick may be a wounding (m)

Grievous  
bodily  
harm

An injury may amount to grievous bodily harm without being either permanent or dangerous, if it is such as seriously to interfere with comfort or health (n), but some grievous injury must have been caused to the body itself, either with a weapon or without a weapon, as by a blow with the fist or by pushing a person down (o)

By loaded arms is meant any gun, pistol, or other arms loaded in the barrel with some explosive and ball, shot, or other destructive material, although the attempt to discharge such gun etc may fail from want of proper priming or any other cause (p) The trigger need not actually be pulled in order to constitute an attempt to discharge (q).

Malice.

If the act charged is unlawful and done wilfully and intentionally, and without any circumstances to justify it and take away its *prima facie* character of unlawfulness, it is malicious (r) Malice against the individual actually injured is not essential, general malice, *i e*, an intention to do an unlawful act, is sufficient (s)

(e) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 18

(f) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(g) *Moriarty v Brooks* (1834), 6 O & P 684, *R v Beckett* (1836), 1 Mood & R 526

(h) *R v M'Loughlin* (1838) 8 C & P 635

(i) *R v Smith* (1837), 6 C & P 173

(k) *R v Jones* (1848), 3 Cox, C C 441

(l) *R v. Waltham* (1849), 3 Cox, C C 442

(m) *R v Duffill* (1843), 1 Cox, C C 49

(n) *R v. Ashman* (1858), 1 F & F 88, WILLES, J

(o) *R v Clarence* (1888), 22 Q B D 23, 41, C O R, STEPHEN, J; decided on similar words in Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 20

(p) Offences against the Person Act, 1861 (24 & 25 Vict c. 100), s 19.

(q) *R v Duckworth*, [1892] 2 Q B 83 C O R (overruling *R v St. George* (1840), 9 O & P 483), *R v Linneker*, [1906] 2 K B 99, C C R.

(r) *R v Clarence, supra*, at p 36

(s) *R v Hunt* (1821), 1 Mood C O 93.

On an indictment for wounding with intent the actual intent must be proved (*t*). In considering what will amount to evidence of an intent to do grievous bodily harm regard must be had to the weapon, if any, used, and the conditions under which it was used. The mere striking of the blow with a fist, even though grievous bodily harm be done, is not of itself sufficient evidence to show an intent to do grievous bodily harm (*a*).

SECT 1  
Acts  
involving  
bodily  
injury.

Intent must  
be proved

Where the distance at which a gun is fired is so great that serious injury does not and was not likely to result, the shooting, though the gun be aimed at the prosecutor, will not of itself be evidence of a shooting with intent to maim or to do grievous bodily harm (*b*).

The intent need not be an intent to do grievous bodily harm to the person actually injured, the offence being complete if there be an intent to maim, disfigure etc any person (*c*).

SUB-SECT 9—*Unlawful Wounding etc*

1212 Everyone is by statute (*d*) guilty of a misdemeanour who unlawfully and maliciously wounds or causes grievous bodily harm to any person either with or without any weapon or instrument.

Unlawful  
wounding.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

Though there be no intent to wound, yet a person may be guilty of unlawful wounding if he uses a weapon which is known to be calculated to wound (*f*).

Upon the trial of an indictment for any felony, except murder or manslaughter, where the indictment alleges that the defendant cut, stabbed, or wounded any person, if the jury are satisfied that the defendant is guilty of the cutting, stabbing, or wounding, but are not satisfied that he is guilty of the felony charged in the indictment, they may acquit him of the felony and convict him of unlawfully wounding, and he may then be punished for that offence (*g*).

(*t*) *R v Cox* (1859), 1 F & F 664

(*a*) *R v Wheeler* (1844), 1 Cox, C C 106

(*b*) *R v Abraham* (1845), 1 Cox, C C 208, where the prisoner was only forty or fifty yards distant, and fired at the prosecutor intentionally, and the jury were directed to acquit of the felony and convict of a common assault only, a direction which upon the facts seems difficult to understand, and see *R v Ward* (1872), L R 1 C C R 356, decided upon s 20.

(*c*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 18, compare *R v Stopford* (1870), 11 Cox, C C 643, *R v Lynch* (1846), 1 Cox, C C 361, where the prisoner mistook the prosecutor for another person, and *R v Fretwell* (1864), Le & Ca 443, where the prisoner fired at a group of persons intending generally to do grievous bodily harm.

(*d*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 20. As to what constitutes wounding and grievous bodily harm, see p 600, *ante*.

(*e*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions.

(*f*) *R v Cox, supra*, see also *R v Ward, supra*, where the defendant had maliciously shot in the direction of the prosecutor with a view to frighten him, and the latter was seriously injured, and the court upheld a conviction under this section.

(*g*) Prevention of Offences Act, 1851 (14 & 15 Vict c 19), s 5. This section appears to apply only to the felonies of wounding with intent to murder under s. 11 of the Offences against the Person Act, 1861 (24 & 25 Vict c 100),

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bodily  
injury.

**1213** Where a man unlawfully and maliciously does an act calculated to cause a panic in a public assembly (*e g*, places a bar across the door in such a way as to cause a crush in which persons are injured), he may be convicted of the offence of causing grievous bodily harm (*h*)

Causing  
panic.

Where one person produces in the mind of another such a sense of immediate danger as causes the other to endeavour to escape, the person responsible for the creation of that state of mind is also responsible for any injuries which may result to the person who endeavours to escape (*i*)

As in the case of felonious wounding (*j*), it is immaterial whether the person actually struck is the person whom the prisoner intended to strike (*k*)

SUB-SECT 10—*Attempt to Choke etc with intent to commit an Indictable Offence.*Attempt to  
choke etc.

**1214** Everyone is by statute (*l*) guilty of a felony who by any means whatever attempts to choke, suffocate or strangle, or by means calculated to produce that effect attempts to render any person unconscious or incapable of resistance, with intent to enable the assailant himself or another person to commit, or with intent to assist in committing, any indictable offence

The punishment for this offence is penal servitude for life or for not less than three years and imprisonment with or without hard labour for not more than two years, and the court may order the offender, if a male, to be whipped (*m*)

SUB-SECT 11—*Administering Drug with intent to commit an Indictable Offence*Administer  
ing drugs

**1215** Everyone is by statute (*n*) guilty of a felony who administers to or causes to be taken by any person any chloroform, laudanum, or other stupefying or overpowering drug or thing, or attempts to do so with intent to enable himself or any other person to commit, or with intent to assist in committing, any indictable offence

The punishment for this offence is penal servitude for life or for

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wounding with intent to maim, disfigure, or disable or to do grievous bodily harm or to resist lawful apprehension under s 18 of that statute, and wounding an officer employed in the prevention of smuggling under the Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 193. It does not apply to any case where the indictment does not allege a felonious cutting, stabbing, or wounding, and a prisoner indicted under s 18 for a felonious shooting, and for doing grievous bodily harm with intent to do grievous bodily harm, cannot, on that indictment, be convicted of unlawful wounding (*R v Miller* (1879), 14 Cox, C C 356)

(*h*) *R v Martin* (1881), 8 Q B D 54, C C R \*

(*i*) *R v Halliday* (1884), 61 L T 701, C C R, *R v Ward* (1872), L T 1\*

C C R 336 and see p 572, ante

(*j*) See p 601, ante

(*k*) *R v Latimer* (1886), 17 Q B D 359, C C R.

(*l*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 21

(*m*) *Ibid* Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1); Garroters Act, 1863 (26 & 27 Vict c 44). As to whipping see p 664, post.

(*n*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 22. And see p 614, post, as to administering stupefying drugs etc to a woman with a view to have carnal connection with her. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

not less than three years, or imprisonment with or without hard labour for not more than two years (o).

SUB SECT 12—*Administering Poison etc. so as to Endanger Life.*

**1216** Everyone is by statute (p) guilty of a felony who unlawfully and maliciously administers or causes to be administered to or taken by any person any poison or other destructive or noxious thing so as thereby either to endanger the life of such person or to inflict upon him grievous bodily harm

The punishment for this offence is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour for not more than two years (q)

If the poison or noxious thing be administered with intent to injure, aggrieve, or annoy any person, the offence is a misdemeanour (r), and the punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (s)

But if, in fact, grievous bodily harm is caused by the noxious thing, the prisoner is guilty of the felony above referred to, although the intent was merely to injure or annoy (t).

On an indictment charging the felony of administering poison so as to cause grievous bodily harm the jury may convict of the misdemeanour of administering it with intent to injure or annoy (a)

The drug or thing administered must in this case be noxious in itself, and not merely so when taken in excess, or the prisoner cannot be convicted, although there may have been an intent to injure or annoy (b) It is sufficient that the actual amount administered is enough to cause injury, even though when taken in smaller quantities the particular thing given would be harmless (c) And probably if the thing administered were a recognised poison, the quantity used would be immaterial (d) The administering does not necessarily consist in the actual giving of the poison to the prosecutor by the accused It is sufficient if poison be placed by the accused where it will be taken (e), or if it be handed to a third person in order that it may be given to another, although it may ultimately reach and be taken by someone for whom it was not intended (f)

The administration of cantharides to a woman with the intention

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involving  
bodily  
injury.

Administer-  
ing poison.

(o) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 22, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(p) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 23

(q) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is triable at quarter sessions

(r) *Ibid*, s 24

(s) *Ibid*, The offender may be fined (*ibid*, s 71), Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(t) *Tulley v Corrie* (1867), 10 Cox, C C 534, 640

(a) Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 26

(b) *R v Hennah* (1877), 13 Cox, C O 547

(c) *R v Cramp* (1880), 5 Q. B. D 307, C. C R., decided under s. 58

(d) *Ibid*.

(e) *R v Harley* (1830), 4 O & P 369

(f) *R v Michael* (1840), 9 C. & P. 356, *R. v Lewis* (1833), 6 O. & P. 161; and see note (g) on p 593, *ante*.

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involving  
bodily  
injury.

Causing  
explosion

of exciting her sexual passion is an administration of a noxious thing with intent to injure or annoy (g)

SUB-SECT 13—*Injury by Explosion or Corrosives.*

**1217** Everyone is by statute (h) guilty of a felony who unlawfully and maliciously burns, maims, disfigures or disables, or does grievous bodily harm to any person by the explosion of any explosive substance

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years. If the offender is a male under sixteen years of age, in addition to any other punishment he may be whipped (i)

**1218** Everyone is by statute (h) guilty of a felony who unlawfully and maliciously (1) causes any explosive substance to explode, or (2) sends to or causes to be taken or received by any person any explosive substance or other dangerous or noxious thing, or (3) places anywhere or throws at or upon or otherwise applies to any person any corrosive fluid, or any destructive or explosive substance, with intent, in any such case, to burn, maim, disfigure or disable any person, or to do grievous bodily harm to any person, whether any bodily injury be effected or not

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years. If the offender is a male under sixteen years of age, in addition to any other punishment he may be whipped (l)

**1219** Everyone is by statute (m) guilty of a felony who unlawfully and maliciously places or throws in, into, against or near any building, ship or vessel any explosive substance with intent to do any bodily injury to any person, whether or not an explosion takes place or any bodily injury is effected

The punishment for this offence is penal servitude for fourteen or for not less than three years, or imprisonment with or without hard labour for not more than two years. If the offender is a male under sixteen years of age, in addition to any other punishment he may be whipped (n)

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(g) *R v Wilkins* (1861), 11 C & Cr 89. As to the administration of stupefying drugs see p. 602, *ante*, and pp. 612, 614, *post*

(h) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 28

(i) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(k) *Ibid*, s 29. Boiling water may be a destructive substance within the meaning of the section (*R v Crawford* (1845), 2 Car & Kir 129). As to explosives, see also p. 775, *post*

(l) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 29, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(m) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 30

(n) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not, it seems, excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1). As to damaging buildings by explosion with intent to murder, see p. 694, *ante*



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involving  
bodily  
injury.

**1220** Everyone is by statute (*p*) guilty of a misdemeanour who knowingly has in his possession, or makes any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, instrument, or thing, with intent by means thereof to commit any felony mentioned in the Offences against the Person Act, 1861 (*q*)

The punishment for this offence is imprisonment for not more than two years with or without hard labour and, in the case of a male under sixteen years of age, a whipping (*r*)

#### SUB-SECT 14 —*Setting Man-traps etc*

**1221** Everyone is by statute (*a*) guilty of a misdemeanour who sets or places, or causes to be set or placed, any man-trap, spring-gun, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that it shall, or whereby it may, destroy or inflict grievous bodily harm on a trespasser or other person coming in contact with it

Setting  
man-traps

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*b*)

A person who knowingly and wilfully permits any such engine, which may have been set or placed in any place in his possession or occupation by some other person, to continue so set or placed is deemed to have set or placed it with the above-mentioned intent (*c*)

It is not forbidden to set such traps as are usually set with the intent of destroying vermin, or to set, between sunset and sunrise, a mantrap, spring gun, or other engine in a dwelling-house for its protection (*d*) The statute creating the misdemeanour only applies to instruments set with the intention to do grievous bodily harm, or whereby grievous bodily harm is actually caused (*e*)

#### SUB-SECT 15 —*Furious Driving*

**1222** Everyone is guilty of a misdemeanour (*f*) who, having the charge of any carriage or vehicle, by wanton or furious driving or

Furious  
driving.

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 64

(*q*) 24 & 25 Vict c 100

(*r*) *Ibid*, s 64 This offence, it seems, is triable at quarter sessions As to offences under the Explosive Substances Act, 1883 (46 Vict c 3), see p 775, *post*, and title EXPLOSIVES

• (*a*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 31

(*b*) *Ibid* The defendant may also be fined and ordered to find sureties (*ibid*, s 71, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1) This offence is triable at quarter sessions

Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 31

(*d*) *Ibid*

(*e*) *Jordan v Crump* (1841) 8 M & W 782, 787, a dogspear is therefore not within the section

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 35 A bicycle is a vehicle within the meaning of this section (*R v Parker* (1895), 59 J P 793) Furious driving is punishable summarily by a fine of £5 (Highways Act, 1835 (5 & 6 Will 4, c 50), s 76), see also as to riding or driving to the common danger and the arrest of the offender, Public Health Acts Amendment

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**injury.**

racing, or other wilful misconduct, or by wilful neglect, does or causes to be done to any person any bodily harm

The punishment for this offence is imprisonment with or without hard labour for two years (g)

**SUB-SECT 16 — Assault**

**Assault.**

**1223** An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner, and if force be actually applied, either illegally or without the consent of the person assaulted, and in an angry, rude, revengeful, or violent manner, the assault becomes a battery, however slight the force may be (h) Every battery includes an assault

Mere words can never amount to an assault (i) There must be some act indicating an intention of assaulting, or which an ordinary person might reasonably construe as indicating such an intention, or some act amounting to an attempt

If no actual violence is used, there must, to constitute an assault, be some threatening act sufficient to raise in the mind of the person threatened a fear of immediate violence, therefore, if an offer is made to strike a person with the fist, at such a distance as to make it impossible for a blow to reach, there is no assault, so, too, where a pistol is presented at a range to which the ball cannot by any possibility carry (k)

**False**  
**imprison-**  
**ment.**

**1224** It is a common law misdemeanour punishable by fine and imprisonment to imprison any person without lawful cause (l)

Act, 1907 (7 Edw 7, c 53), s 79 A person driving a motor car recklessly or negligently, or at a speed or in a manner dangerous to the public, is liable on summary conviction to a penalty of £20, and on a second conviction to a fine of £50 or imprisonment for three months There are also penalties for driving at a greater speed than twenty miles per hour (Motor Car Act, 1903 (3 Edw 7, c 36), ss 1, 9, 11)

(g) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 35 The defendant may also be fined and ordered to find sureties (*ibid*, s 71) This offence is triable at quarter sessions

(h) 1 Hawk P C, c 62, s 5

(i) 1 Hawk P C c 15 s 1

(k) See *R v St George* (1840), 9 C & P 483, 490, *R v March* (1811), 1 Car & Kir 496, compare *R v Renshaw* (1847) 2 Cox, C C 280, *R v Cotesworth* (1703) 6 Mod Rep 172 Putting a noxious thing into liquor in order that a person may drink it is not an assault or any other common law misdemeanour (*R v Hanson* (1849), 2 Car & Kir 912, *R v Walkden* (1845), 1 Cox, C C 282, not following *R v Button* (1838), 8 C & P 660) But see Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 24, (p 603, *ante*), and Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 3 (3) (p 614, *post*) Touching a person so as merely to call his attention, if there is no hostile intention, is not a criminal assault (*Coward v Baddeley* (1859), 4 H & N 478) If two or more meet in a narrow passage, and without any violence or design of harm one touches the other gently, it is no battery, but if either uses violence to the other to force his way in a rude inordinate manner, it will be a battery (*Cole v Turner* (1704), 6 Mod Rep 149) The intention must be considered, so to clap a man on the back in joke or friendship is not an assault (*Williams v Jones* (1736), Lee temp Hard. 298, 301) To cut or injure clothes which a man is at the time wearing is an assault upon him, though no injury may be done or intended to his person (*R v Day* (1845), 1 Cox, C C 207)

(l) Com Dig. Imprisonment, L, 1, 1 East, P C 248 *R v Lisle* (1860), Bell, C C 220, see *Hunter v Johnson* (1884), 13 Q B D 225

Every restraint of the liberty of one person under the custody of another, either in a gaol, house, or in the street, is in law an imprisonment (*m*)

SECT 1.  
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involving  
bodily  
injury.

Consent.

**1225** Generally speaking, in order to constitute an assault it is necessary that the act should be done against the will of the person assaulted, and, in consequence, consent is usually a good defence to a charge of assault (*n*). If, however, the act amounts to a breach of the peace or has a direct tendency to cause a breach of the peace, and is therefore injurious to the public, or if the act be a dangerous one, consent will afford no defence (*o*). For these reasons all persons taking part in or aiding and abetting a prize fight are guilty of assault (*p*).

The consent must be that of a rational person who knows the nature of the act consented to (*q*), and fraud as to the nature of the act done, or as to the identity of the person doing it, vitiates consent (*r*). Therefore if a medical man strips a female patient naked on the pretence that he is thereby diagnosing her case (*s*), or has connection with a female child of fourteen on pretence that he is treating her medically (*t*), he is guilty of an assault.

Without the consent of a prisoner, a judge or magistrate has no power to order an examination of his person, and if in pursuance of such an order an examination is made, the person who made the order and the person who makes the examination are guilty of an assault. But if the prisoner consents, even under a misapprehension as to the power to make such an order, such consent is an answer to the charge of assault (*u*), and a

(*m*) 1 Buller, Nisi Prius 22a. A wrongful imprisonment amounts to an assault (1 Hawk P C, c 60, s 7), even though no violence or threat of violence is actually used (see *R v Linberry* (1905), 69 J P 107), and is usually punished as such, there being few (if any) reported cases of indictments for false imprisonment simply, as an assault is always charged in the same indictment and usually in one count with the false imprisonment as in *R v Leney* (1860), Bell, C C 220, though a count for false imprisonment alone without alleging an assault is good. For forms of indictment see 3 Chitty, Criminal Law, 834. An imprisonment may include a battery, but does not necessarily do so (*Emmett v Lye* (1805), 1 Bos & P (N R) 255). See, generally, as to false imprisonment, title TRESPASS.

(*n*) *R v Meredith* (1838), 8 C & P 589.

(*o*) *R v Coney* (1882), 8 Q B D 534, 537, C C R.

(*p*) *Ibid*, *R v Perkins* (1831), 4 C & P 537, *R v Brown* (1841), Car & M 314. The mere presence at a prize fight of a spectator who takes no part in the proceedings, either by word or act, does not, as a matter of law, necessarily make him an aider or abettor, but his presence unexplained may afford some evidence that he was present aiding and abetting (*R v Coney*, *supra*, at pp 552, 558).

(*q*) *R v Lock* (1872), L R 2 C C R 10.

(*r*) *R v Clarence* (1888), 22 Q B D 23, 43, C C R, where the majority of the judges held that a wife's consent to her husband having intercourse with her was not vitiated by the fact that he fraudulently concealed from her the fact that he was suffering from venereal disease. As to a woman permitting a man to have intercourse with her under the belief that he is her husband, whom the man is personating, see Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 4, p 612, *post*.

(*s*) *R v Rowlands* (1824), 1 Mood. C C 198.

(*t*) *R v Case* (1850), 1 Den 580.

(*u*) *R v Boulton* (1871), 12 Cox, C C 87, 91. The right of a constable to search a prisoner upon his arrest appears to be impliedly recognised by the

## SECT 1

Acts  
involving  
bodily  
injury.

## Accident.

submission even under protest is, unless induced by force, a sufficient consent

In cases of indecent assault the consent of a child under the age of thirteen affords no defence (*a*)

**1226** It is a sufficient defence to a charge of assault that the act alleged was a mere accident (*b*), or that it was done while the parties were engaged in a game or sport which was lawful and not seriously dangerous to life or limb (*c*)

## Correction

**1227** An act is not an assault, if it is done in the course of lawful correction, as that of a child by its parent, or that of an apprentice or scholar by his master, or in the punishment of a convicted criminal according to law by the proper officer (*d*) In the two former cases the correction must be reasonable and moderate and administered with a proper instrument, and, in the case of a female, in a decent manner (*e*)

Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s 44, but, except in the metropolis (as to which see Metropolitan Police Act, 1839 (2 & 3 Vict c 47), s 66, Canal (Offences) Act, 1840 (3 & 4 Vict c 50), s 11), there is no express statutory authority given to make such a search upon an arrest for larceny or similar offences As to the extent of the right of search at common law, see *Bessell v Wilson* (1853), 20 L T (o s) 233, *R v Russ* (1819) 2 Car & Ku 822, *Dillon v O'Brien* (1887), 16 Cox, C C 245, *R v Boulton*, *supra*, at p 95, and p 309, *ante*, *Latter v Brudnell* (1881), 50 L J (Q B) 166, 418, C A

(*a*) Criminal Law Amendment Act, 1880 (43 & 44 Vict c 45), s 2

(*b*) *Gibbons v Pepper* (1695), 2 Salk 637, *Stanley v Powell*, [1891] 1 Q B 86

(*c*) *R v Coney* (1882), 8 Q B D 534, 539, 549, C O R

(*d*) *R v Hopley* (1860), 2 F & F 202, at p 206, COCKBURN, C J, *R v Griffin* (1869), 11 Cox, C O 402, 1 Hawk P O, c 28, s 23, 8th ed, p 483, c 10, s 4, p 80 See also p 577, *ante*

(*e*) *R v Miles* (1812), 6 Jur 213, *R v Hopley* (1860), 2 F & F 202, 206, *Cleary v Booth*, [1893] 1 Q B 465 As to the right of a parent or of a person *in loco parentis* to chastise his child, while under age, in a reasonable manner, see 1 Bl Com 452, 1 Hale, P C 473, 474, *R v Conner* (1836), 7 C & P 438 The right of the schoolmaster to chastise a pupil is regarded as a delegation of the parental right (*Cleary v Booth*, *supra*), and extends to a responsible assistant teacher (*Mansell v Griffin* (1908), 99 L T 132, C A) The right of a parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to such child or young person is recognised and not affected by the Children Act, 1908 (8 Edw 7, c 67), s 37 Notwithstanding early *dicta* to the contrary, a husband is not entitled to inflict personal chastisement upon his wife, or to imprison her, though probably he may restrain her, if she is about to commit an act which would dishonour him (*R v Lister* (1721), 1 Stra. 478, *R v Jackson*, [1891] 1 Q B 671, 679, 683, C A) It was formerly held that a master might moderately chastise his servant (*Bliche v Grove* (1664), 1 Keb 661, *R v Keate* (1698), Comb 406, 408, Bac Abr, tit Master and Servant, N, 1 Hawk P O, c 29, s 5, *ibid*, c 60, s 23, Post 262) In 1785 Sir WM JONES, in charging a grand jury at Calcutta laid down that a master had this right of chastisement (Sir Wm Jones's Works, Vol III, pp 8, 12, cited in Macdonell, Law of Master and Servant, 2nd ed., p 30, n) Since that date there has been no judicial opinion expressed on the subject Text-book writers have assumed that the right no longer exists in law, but it might be found difficult, if the question arose, to disregard the above-mentioned authorities In the case of an apprentice there is no such doubt, as a master is clearly entitled to chastise his apprentice for misconduct, reasonably and in moderation (*Penn v Ward* (1835), 2 Cr M & R 336, *Walter v Everard*, [1891] 2 Q B 369, 376, C A), though this probably is a mere personal right which he cannot depute to

**1228.** If the act alleged be done in self defence, it is justified provided that no more force is used than is necessary for mere defence. If an assault is threatened, as by raising a hand against another within a distance capable of the latter being struck, the latter may strike in his own defence to prevent it (*f*), and, although unnecessary violence must not be used, if a person strikes at another, the person struck at is justified in using such a degree of force as will prevent a repelition of the assault (*g*).

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Acts  
involving  
bodily  
injury.  
Self defence.

**1229** A husband may justify a battery in defence of his wife, a master in defence of his servant, a child in defence of his parent, and *vice versa* in each case (*h*). If the violence used is excessive, or if it is used after the danger is passed or by way of revenge, the assault cannot be justified (*i*).

Defence of  
others.

**1230** A man is not entitled to use a deadly weapon to repel a common assault, to justify the use of such a weapon he must be in fear of serious bodily danger or robbery, or some similar crime of violence (*k*), and must first have retreated as far as possible and must not use more violence than is appropriate to the occasion (*l*).

Use of deadly  
weapon

**1231** A person is justified in using reasonable force in defence of his possessions, as for instance in removing a trespasser or preventing his entry, or to restrain another from taking or destroying his goods. But no more violence must be used than is necessary for the purpose (*m*).

Defence of  
property

**1232** It is an answer to a charge of assault that the defendant was lawfully arresting the prosecutor, either on criminal or civil process, and used no more force than was necessary (*n*).

Lawful arrest.

another (see *Combes's Case* (1613), 9 Co. Rep. 75 a, 76 a). The master of a ship has power to inflict moderate and reasonable punishment upon one of his crew for riotous and mutinous misconduct (*Lamb v Burnett* (1831), 1 Cr. & J. 291, *Watson v Christie* (1800), 2 B. & P. 224), but the right of flogging a disobedient or mutinous seaman has perhaps now fallen into desuetude.

(*f*) A person so threatened is not limited to warding off a blow, but is justified in striking if reasonably necessary for self defence (*R v Carman Dean* (1909), 73 J. P. 255, O. C. A.).

(*g*) *Anon* (1836), 2 Lew. C. C. 48, PARKE, B., and compare 1 Sid. 246, and p. 586, *ante*.

(*h*) 1 Hawk. P. C., c. 60, ss. 23, 24, 3 Salk. 46.

(*i*) *R v Driscoll* (1841), Car. & M. 214.

(*k*) *Cockcroft v Smith* (1705), 2 Salk. 642, *R v Hewlett* (1858), 1 F. & F. 91.

(*l*) *R v Odgers* (1813), 2 Mood. & B. 479, see p. 587, *ante*.

(*m*) 1 Hawk. P. C., c. 60, s. 23, *Weaver v Bush* (1798), 8 Term Rep. 78, *Scott v Brown* (1884), 51 L. T. 746, *Harrison v Rutland (Duke)*, [1893] 1 Q. B. 142, O. A., compare *Dean v Hogg* (1834), 10 Bing. 345, *Holmes v Bagge* (1813), 1 E. & B. 782, where the defendants had the full enjoyment of the premises, but not the full and exclusive right of possession, and on this ground they were unable to justify the forcible removal of the plaintiffs. See also title TRESPASS, and as to forcible entry and detainer, p. 474, *ante*.

(*n*) 2 Roll. Abr. 546, A., and perhaps even under certain circumstances, if the object was merely to serve civil process (*Harrison v Holston* (1830), 10 B. & C. 445).

## SECT 1

Acts  
involving  
bodily  
injury.Punishment  
for different  
kinds of  
assault

**1233** A common assault is a misdemeanour punishable with imprisonment with or without hard labour for not more than one year (o)

An assault with intent to commit a felony is a misdemeanour for which two years' imprisonment with or without hard labour may be awarded (p).

An assault occasioning actual bodily harm is a misdemeanour, the punishment for which is penal servitude for not more than five nor for not less than three years, or imprisonment with or without hard labour for not more than two years (a).

Verdict of  
common  
assault on  
indictment  
for a more  
serious  
assault

**1234** Upon the general principle that whenever a defendant is indicted for a misdemeanour which includes in it an offence of minor extent and gravity he may be convicted of the minor offence so included, a person may be found guilty of a common assault upon an indictment charging him with inflicting grievous bodily harm, or with unlawful wounding, or with assaulting and causing actual bodily harm (b), or upon any indictment charging a misdemeanour which includes the lesser misdemeanour of an assault (c). But there cannot be a conviction for a common assault upon an indictment for feloniously assaulting with intent to rob (d).

(o) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 47. Instead of or in addition to imprisonment the offender may be fined and ordered to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour (*ibid*, s 71). This offence is triable at quarter sessions. In all cases of assault, except (1) where the assault was committed in the course of an attempt to commit felony, (2) where the justices are of opinion that the assault is from any other circumstances a fit subject for prosecution by indictment, and (3) where any question arises as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice, a court of summary jurisdiction may upon complaint of the party aggrieved hear the charge, and upon conviction sentence the offender to imprisonment for two months, or a fine of £5, or in the case of an aggravated assault upon a woman or child, to imprisonment for six months, or a fine of £20 (Offences against the Person Act, 1861 (24 & 25 Vict c 100), ss 42, 43, 46, see title MAGISTRATES). If the complaint is dismissed they are required to deliver to the defendant a certificate to that effect and the obtaining of such a certificate or, if he has been convicted, the payment of the fine or the suffering of the imprisonment awarded, releases him from all further or other proceedings for the same cause (*ibid* ss 44, 45). Although the charge may have only been of a simple assault, the certificate will be a bar to an indictment for an aggravated assault arising out of the same transaction (*R v Ellington* (or *Ebrington*) (1861), 1 B & S 688), but not to an indictment for manslaughter if the person assaulted subsequently dies (*R v Morris* (1867), L R 1 C C R 90). The certificate or the suffering of the punishment should be specially pleaded (*R v Stanton* (1851), 5 Cox, C C 324), as was done in *R v Ellington*, *supra*.

(p) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 38. This offence is triable at quarter sessions. The punishment is the same for an assault on a clergyman in the performance of his duty (see *ibid*, s 36).

(a) *Ibid*, s 47, and Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions.

(b) *R v Yeaton* (1861), 9 Cox, C C 91, C C R, *R v Oliver* (1860), 8 Cox, C C 384, C C R.

(c) *R v Canwell* (1869), 11 Cox, C C 261, C C R, *R v Taylor* (1869), L R 1 C C R 194.

(d) *R. v. Woodhall* (1872), 12 Cox, C. C. 246, DENMAN, J.

SECT. 2—*Offences against Women and Girls.*SUB-SECT. 1—*Rape*SECT. 2.  
Offences  
against  
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and Girls.

**1235.** Anyone is guilty of the felony of rape who has unlawful and carnal knowledge of a woman by force and against her will (*e*)

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*f*)

Rape

**1236** A man cannot be guilty as a principal in the first degree of a rape upon his wife, for the wife is unable to retract the consent to cohabitation which is a part of the contract of matrimony (*g*). But a husband, who is present and assisting another person to commit a rape upon his wife, may upon an indictment for rape be convicted as a principal in the second degree (*h*), as also may a woman under similar circumstances (*i*)

Husband and wife

**1237** There must be evidence of penetration of the private parts of the woman by the private parts of the prisoner, but the slightest penetration is sufficient (*k*), and it is not necessary that the hymen should be ruptured (*l*). It is not necessary to prove actual emission, the carnal knowledge being deemed to be complete upon proof of penetration only (*m*). If penetration cannot be satisfactorily proved, the prisoner may be convicted of an attempt to commit a rape (*n*) or of an indecent assault (*o*)

Penetration.

(*e*) 1 Hawk P C, c 16, s 2 (8th ed, I, 122) As to the consent of a girl under the age of thirteen to the unlawful connection being no defence, see p 612, *post* As to boys under fourteen, see p 240, *ante* As to a woman being guilty of rape as a principal in the second degree, see p 250, note (*r*), *ante*

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 48, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1)

(*g*) 1 Hale, P C, p 629, where Sir Matthew Hale also discusses the question whether connection after a voidable marriage, brought about by compulsion and violence, amounts to rape The proposition stated in the text, and others arising from it, were discussed at great length by the Court for Crown Cases Reserved in *R v Clarence* (1868), 22 Q B D 23 Two of the judges who dissented from the decision of the majority declined to admit that the matrimonial consent of the wife to connection could not under any circumstances be retracted, and an opinion was expressed (*per* HAWKINS, J, at p 52) that a husband might be convicted of a rape upon his wife, if he had connection with her maliciously intending to communicate disease to her In *Popkin v Popkin* (1791), 1 Hag. Ecc 765, n (a divorce case where cruelty was charged), it was said by Lord STOWELL, at p 767, n, "the husband has a right to the person of his wife, but not if her health is endangered", but whether he referred to a legal or a moral right is not clear

(*h*) 1 Hale, P C 629, *R v Audley* (Lord) (1631), 3 State Tr 402

(*i*) *R v Ram* (1893), 17 Cox, C C 609

(*k*) *R v Lines* (1844), 1 Car & Kir 393, *R v Stanton* (1814), 1 Car & Kir. 415

(*l*) *R v Hughes* (1841), 2 Mood C C 190

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 63, see *R v Marsden*, [1891] 2 Q B 149, C C R.

(*n*) Criminal Procedure Act, 1851 (14 & 15 Vict c. 100), s 9 So a person charged with aiding and abetting a person in committing a rape may be convicted of aiding and abetting him in attempting to commit it (*R v Hapgood* (1870), L R. 1 C C R 221)

(*o*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c. 69), s 9

**SECT. 2.**  
**Offences**  
**against**  
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**Consent.**

**1238** The connection must have been against the will of the woman, except in the case of a girl under the age of thirteen (*a*) A consent obtained by menaces of death or duress is in law no consent (*b*) If a person by giving a woman liquor makes her intoxicated to such a degree as to be insensible, and then has connection with her, he may be convicted of rape, whether he gave her the liquor to cause insensibility or only to excite her (*c*) If the woman is asleep when the connection takes place, she is incapable of consent, and although no violence is used, the prisoner may be convicted of rape, if he knew that she was asleep (*d*)

Submission owing to ignorance of, or to mistake as to the nature of, the act done or the person doing it, and induced by the fraud of the prisoner, does not constitute consent (*e*) A person who induces a married woman to permit him to have connection with her by personating her husband is guilty of rape (*f*)

If a woman of unsound mind is in such a state of idiocy as to be incapable of expressing either consent or dissent, and the prisoner has connection with her without her consent, he is guilty of rape, but otherwise the consent of such a woman, induced by mere animal instinct, is sufficient to prevent the act from constituting a rape (*g*)

(*a*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4, *R v Rutchiffe* (1882), 10 Q. B. D. 74, C. C. R. This also applies to an attempt to commit the offence (*R v Beale* (1865), L. R. 1 C. C. R. 10)

(*b*) 1 Hale, P. C. 631, 1 Hawk. P. C., c. 16, s. 7, *R v Jones* (1861), 4 L. T. 151

(*c*) *R v Camplin* (1845), 1 Cox, C. C. 220, C. O. R., where the girl, who was thirteen years of age, had refused the prisoner's advances so long as she remained conscious. If anyone else had made her drunk, the prisoner might equally have been convicted. PAINFON J., repudiated the idea that the person of a drunken woman by the roadside might be violated with impunity by every passer-by, as to which see also *R v Fletcher* (1859), Bell, C. C. 63, 71. As to procuring debauchment of women by threats, or by fraud, or by the use of intoxicating drugs, see also p. 614, *post*

(*d*) *R v Mayers* (1872), 12 Cox, C. C. 311, *R v Young* (1878), 14 Cox, C. C. 114, C. C. R.

(*e*) *R v Flattery* (1877), 2 Q. B. D. 410 C. C. R., *R v Case* (1850), 4 Cox, C. C. 220, *R v Stanton* (1851), 1 Car. & Ku. 415, *R v Clarence* (1898), 22 Q. B. D. 23, 43, C. C. R. The fraud must be as to the nature of the act, or as to the identity of the person committing it (*R v Clarence, supra*, at p. 44, STEPHEN, J.)

(*f*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4. The section only refers to the case of a married woman and the personator of her husband. It is not altogether certain whether a singular personation by another man of the paramour of a concubine would amount to rape. Before the Act it would probably have been held that it did not (*R v Barrow* (1868), L. R. 1 C. O. R. 156. The Irish Court for Crown Cases Reserved refused, however, to follow that case in *R v Dee* (1884), 15 Cox, C. C. 579, and the authority of *R v Barrow* must be considered as to some extent shaken by the observations of the judges in *R v Flattery* (1877), 2 Q. B. D. 410, C. C. R.) In the case supposed the woman would not be protected by s. 3 (2) of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69) (see p. 614, *post*), unless she was commonly supposed to be the wife of her paramour.

(*g*) The statement in the text is taken from a *dictum* of WILLES, J., in *R v Fletcher* (1859), Bell, C. C. 63, 70, which was adopted by KEATING, J., in *R v Fletcher* (1866), L. R. 1 C. C. R. 39, and approved by the Court for Crown Cases Reserved in *R v Barratt* (1873), L. R. 2 C. C. R. 81. See p. 613, *post*.



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Character of  
prosecutrix.

**1239.** A condonation or consent after the fact affords no defence (*h*), nor does the fact that the woman was the prisoner's concubine (*i*) or a common strumpet (*l*).

**1240** The prosecutrix may be asked in cross-examination whether she has previously had connection with the prisoner with her own consent, and if she denies it, evidence of the fact may be given on behalf of the prisoner (*l*). Evidence may also be given with a view to show her character for general indecency (*m*), or that she is a common prostitute (*n*), she may also be asked if she has had connection with particular men other than the prisoner, but if she denies that she has, evidence cannot be given to contradict her denial (*o*).

**1241** Any person is by statute (*p*) guilty of a misdemeanour who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile woman or girl under circumstances which do not amount to rape, but which prove that he knew at the time of the commission of the offence that she was an idiot or imbecile. The consent of the woman or girl is immaterial.

Carnal  
knowledge of  
an idiot.

The punishment for this offence is imprisonment with or without hard labour for not more than two years (*q*).

(*h*) 1 Hale, P C 631. Formerly a consent subsequent barred an appeal for rape, but not an indictment at the suit of the King (Statute of Westminster the Second (1285) (13 Edw 1, c 34)).

(*i*) 1 Hale, P C 628.

(*l*) 1 Hawk P C, c 10, s 7. These facts, however, will of course have a bearing upon the question whether the prosecutrix consented. Sir Matthew Hale (1 P C 633) states the following circumstances by which the truth of the prosecutrix's evidence may be tested: "If the witness be of good fame, if she presently discovered (*i.e.*, complained of) the offence, made suit after the offender, showed circumstances and signs of the injury whereof many are of that nature that only women are the most proper examiners and inspectors, if the place wherein the act was done was remote from people, inhabitants or passengers, if the offender fled for it, these and the like are concurring evidences to give greater probability to her testimony, which is proved by others as well as herself. But on the other side if she concealed the injury for any considerable time after she had opportunity to complain, if the place where the act was supposed to be committed were near to inhabitants or common recourse or passage of passengers, and she made no outcry when and where it is probable she might be heard by others, these and the like circumstances carry a strong presumption that her testimony is false or feigned", see also 4 Bl Com 213. The fact that the woman made a speedy complaint has always been admissible, as to when the details of her complaint may be given in evidence, see pp 388, 394, *ante*. In practice some corroboration of the woman's statement is always required, though the jury may act upon her uncorroborated evidence, if they think fit.

(*l*) *R v Martin* (1834), 6 C & P 562, *R v Riley* (1887), 18 Q B D 481, C C R.

(*m*) *R v Twinington* (1843), 1 Cox, C C 48.

(*n*) *R v Barker* (1829), 3 C & P 589.

(*o*) *R v Holmes* (1871), L R 1 C C R 334. As to evidence to show the general reputation of a witness for untruthfulness, see p 383, *ante*, as to the cross-examination of a prisoner with regard to his character or previous offences if the defence attacks the character of the prosecutrix or alleges the good character of the prisoner, see pp 382, 404, *ante*.

(*p*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 5 (2), it is by statute a misdemeanour punishable in the same way for any person employed in an institution for lunatics, or having the care or charge of a single patient, unlawfully to have or attempt to have carnal knowledge of a lunatic in such institution or under such charge, the consent of the lunatic is immaterial (Lunacy Act, 1890 (53 Vict. c 5), ss 324, 325).

(*q*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c 69), s 5 (2), see

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Evidence of  
 wife of  
 prisoner  
 Conviction  
 of other  
 offences on  
 an indictment  
 for rape.

**1242** Upon a charge of rape or of unlawful carnal knowledge of a female idiot etc, the wife of the prisoner may be called as a witness for the prosecution without the consent of the prisoner (r).

**1243** Upon the trial of an indictment for rape the jury may convict the prisoner (s) of —By threats procuring or attempting to procure the woman to have any unlawful carnal connection (t); or by false pretences procuring her to have any unlawful carnal connection (u), or administering to her any drug, matter, or thing with intent to stupefy so as thereby to enable any person to have unlawful carnal connection with her (a), or unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of a girl under the age of thirteen years (b), or unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of a girl above the age of thirteen years and under the age of sixteen years (c), or unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of an idiot or imbecile woman under circumstances which do not amount to rape (d), or of an indecent assault

Upon such conviction the defendant is liable to be punished in the same manner as if he had been convicted upon an indictment for such offence.

**SUB SECT 2—Offences under the Criminal Law Amendment Act, 1885**

**Procuring**

**1244** Any person is by statute (e) guilty of a misdemeanour who (1) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection (f) either within or without the King's dominions, or (2) by false pretences or false representations (g) procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful connection either within or without the King's dominions, or (3) administers to or causes to be taken by any woman or girl any drug, matter, or thing with intent to stupefy or overpower her so as

also Lunacy Act, 1890 (53 Vict c 5), ss 324, 325, and title LUNATICS AND PERSONS OF UNSOUND MIND The offence is not triable at quarter sessions (Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 17)

(r) Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 4 It is not clear, however, that she can be compelled to give evidence against her will (Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 20), she certainly cannot be compelled to disclose any communication made to her by the prisoner during their marriage (Criminal Evidence Act, 1898, *supra*, s 1 (d)), and see p 406, *ante*

Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 9.

*Ibid*, s 3 (1)

(i) *Ibid*, s 3 (2)

(a) *Ibid*, s 3 (3).

(b) *Ibid*, s 4

(c) *Ibid*, s 5 (1)

(d) *Ibid*, s 5 (2)

(e) *Ibid*, s 3

(f) This may be either with the defendant himself or with another man (*R v Williams* (1898), 62 J P 310).

(g) If these are set out (and in *R v Field*, Central Criminal Court Sessions Papers, 1891, it was held that it was necessary to do so), they need not be negatived in the indictment (*R v Clarke and Lyons* (1895), 59 J. P. 248).

thereby to enable any person to have unlawful carnal connection with her.

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The punishment for any such offence is imprisonment with or without hard labour for not more than two years (*h*)

No person may be convicted of any such offence upon the evidence of one witness, unless such witness be corroborated in some material particular by evidence implicating the accused (*i*)

**1245** Any person is by statute (*k*) guilty of felony who unlawfully and carnally knows any girl under the age of thirteen years

Unlawful  
carnal  
knowledge of  
girl under  
thirteen.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*l*)

The legal presumption that a boy under the age of fourteen years cannot be guilty of rape extends to this offence (*m*)

Any person is by statute (*n*) guilty of a misdemeanour who attempts to commit this offence

Attempt.

The punishment is imprisonment with or without hard labour for not more than two years, and both in this and the last-mentioned offence, if the offender's age does not exceed sixteen years, the court may, instead of sentencing him to imprisonment, order him to be sent to a reformatory for not more than five nor for less than two years (*o*)

In a prosecution either for the completed felony or for the attempt the consent of the girl is immaterial (*p*)

**1246** If upon an indictment for the felony of carnally knowing a girl under the age of thirteen years the jury are satisfied that the prisoner is guilty (1) of procuring or attempting to procure the girl by threats or intimidation to have any unlawful carnal connection, (2) of procuring her to have unlawful connection by false pretences, if she is not a common prostitute or of known immoral character, (3) of causing to be taken by the girl any drug or thing with intent to stupefy her so as to enable any person to have such connection with her, (4) of an attempt to have such connection, (5) of carnally knowing or attempting to have carnal knowledge of a girl under the age of sixteen years, or of an imbecile, or (6) of an indecent assault, but are not satisfied that he is guilty of the felony charged in the indictment, the jury may acquit him of the felony

Conviction  
of other  
offences on  
an indictment  
for carnal  
knowledge of  
girl under  
thirteen.

(*h*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 3 No offence under this Act is triable at quarter sessions (*ibid*, s 17)

(*i*) *Ibid*, s 3, *R v Stauf* (1909), 2 Cr App Rep 6

• (*k*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 4 As to the unsworn evidence of a child of tender years upon a charge of this kind, see p 408, *ante*

(*l*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions (Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 17)

(*m*) *R v Wote*, [1892] 2 Q B 600, C C R The judges expressed different opinions as to whether he could be convicted of the attempt

(*n*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 4

(*o*) *Ibid.*, Children Act, 1908 (8 Edw 7, c 67), ss 57 and 134 (3), and Third Schedule

(*p*) *R v Beale* (1865), L R 10 C R 10.

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against  
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and find him guilty of any one of the above offences. Thereupon the prisoner may be punished as if he had been convicted on an indictment for that offence (*q*).

A boy under fourteen who is indicted for the felony of carnally knowing a girl under thirteen may on that indictment be convicted of an indecent assault (*r*)

The prisoner may be convicted of an indecent assault, although the girl consented to the act (*s*)

**Unlawful  
carnal  
knowledge of  
girl over  
thirteen and  
under  
sixteen.**

**1247** Any person is by statute (*a*) guilty of a misdemeanour who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of a girl of or above the age of thirteen years and under the age of sixteen years. The consent of the girl is immaterial

The punishment is imprisonment with or without hard labour for not more than two years (*b*)

It is a sufficient defence to such a charge that the defendant had reasonable cause to believe that the girl was of or above the age of sixteen years (*c*)

No prosecution for the last-named offence can be commenced more than six months after the commission of the offence (*d*)

In these cases of carnal knowledge of girls under the age of thirteen or sixteen it is sufficient for the prosecution to prove penetration, the crime being complete without emission (*e*).

A girl under the age of sixteen years cannot be convicted of inciting a man to the commission of the offence of unlawful carnal knowledge of her, or of aiding and abetting him in committing it (*f*)

**Evidence of  
age.**

**1248** An extract from a register of births, which is proved to be an examined copy or extract, or which purports to be signed and certified as a true copy or extract by the officer intrusted with custody of the original, is sufficient evidence of the age of the prosecutrix, if she is identified as the person named in the

(*g*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 9. But he cannot, it appears, be convicted of a common assault (*R v Catherall* (1875), 13 Cox, C C 109. It was held that upon a charge of felony under s 4 of the above Act the prisoner might be convicted of an indecent assault although the unsworn evidence of a child was received against him (as to which see p 408, *ante*), and although there was no other sufficient evidence against him (*R v Wreland* (1888), 20 Q B D 827, C C R, and see Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 15, and Children Act, 1908 (8 Edw 7 c 67), s 30)

(*r*) *R v Williams*, [1893] 1 Q B 320 C C R.

(*a*) Criminal Law Amendment Act, 1880 (43 & 44 Vict c 45), s 2

(*a*) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 5 (1).

(*b*) *Ibid*

(*c*) *Ibid*.

(*d*) *Ibid*. Prevention of Cruelty to Children Act, 1904 (4 Edw 7, c 15), s 27. If the original prosecution upon which the prisoner was committed for trial was one of rape, and was commenced within the six months, the prosecution will be in time, even though the prisoner is tried only on an indictment for the statutory misdemeanour at a date when the six months have expired (*R v West*, [1898] 1 Q B 171 C C R)

(*e*) *R v Marsden*, [1891] 2 Q B 149, C C R.

(*f*) *R v Tyrrell*, [1891] 1 Q B 710, C C R.

extract (g). But her age may also be proved by any lawful evidence (h)

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against  
Women  
and Girls.

**1249.** Upon an indictment for carnally knowing a girl between the ages of thirteen and sixteen and for assaulting her the defendant may, if there was no consent on the part of the girl, be convicted of a common assault (i).

**1250** Any person is by statute (l) guilty of felony who, being the owner or occupier of any premises or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known

Owner etc.  
of premises  
suffering  
defilement of  
girl on the  
premises.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (l)

Any such person is by statute (m) guilty of a misdemeanour if the girl is above the age of thirteen and under the age of sixteen years.

The punishment is imprisonment for not more than two years with or without hard labour (n)

In either case it is a sufficient defence that the accused had reasonable cause to believe that the girl was of or above the age of sixteen years (o)

The father or mother of the girl may be convicted of either offence, although she was living at home with them (p).

#### SUB-SECT 3—Incest

**1251.** Any male person is by statute (q) guilty of a misdemeanour who has carnal knowledge of a female who is to his knowledge his granddaughter, daughter, sister, or mother

Incest.

The punishment for this offence is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years, if it is alleged in the indictment and proved that the female is under the age of thirteen years, the accused may be sentenced to penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, if the age of the accused does not exceed sixteen years, he may be sentenced to be whipped and in

(g) Evidence Act, 1851 (14 & 15 Vict c 99), s 14, *R v Weaver* (1872), L R 2 C C R 85

(h) Even by the evidence of persons who have seen her and speak as to their belief with regard to her age (*R v Cox*, [1898] 1 Q B 179, C C R.)

(i) *R v Boslock* (1893), 17 Cox, C C 700 See also *R v Guthrie* (1870), L R 1 C C R 241

(k) Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), s 6 (1)

(l) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1.

(m) Criminal Law Amendment Act, 1885, *supra*, s 6 (2)

(n) *Ibid*

(o) *Ibid*

(p) *R v Webster* (1885), 16 Q B D 134, C C R, but not where the parent has permitted intercourse on one occasion for the purpose of obtaining evidence against a man who has previously seduced the girl (*R v Merthyr Tydfil Justices* (1894), 10 T L R 375) See also p 642, *ante*

(q) Punishment of Incest Act, 1908 (8 Edw 7, c 45), s 1. Offences under this Act are not triable at quarter sessions (*ibid*, s 4)

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**Women**  
**and Girls.**

**Attempt**

addition to be sent to a reformatory for not less than two years or more than five years (*r*). It is immaterial whether the carnal knowledge was had with the consent of the female (*r*)

**1252** Any male person is by statute (*s*) guilty of a misdemeanour who attempts to commit any such offence. The punishment is imprisonment for not more than two years with or without hard labour (*z*).

**Guardianship.**

**1253.** Upon the conviction of the full offence or of an attempt to commit it against a female under twenty-one years of age, the court may divest the offender of all authority over her, and if he is her guardian, remove him from such guardianship, and in any such case may appoint any person or persons to be her guardian or guardians during her minority or any less period, provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect (*a*)

**Female**  
**permitting**  
**incest**

**1254** A female of or above the age of sixteen is by statute (*b*) guilty of a misdemeanour who permits a person who is to her knowledge her grandfather, father, brother, or son to have carnal knowledge of her

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*c*)

In the above-mentioned provisions the terms "brother" and "sister" include half-brother and half-sister, and such provisions apply whether the relationship between the accused and the person with whom the offence is committed is traced through lawful wedlock or not (*d*)

The Vexatious Indictments Act, 1859 (*e*), applies to these offences

**Conviction**  
**on indictment**  
**for rape**

**1255** If on the trial of an indictment for rape the jury are satisfied that the defendant is guilty of an offence under the Punishment of Incest Act, 1908, but are not satisfied that he is guilty of rape, they may acquit him of rape and find him guilty of an offence against that Act, and on a trial for an offence against that Act a defendant may be acquitted of that offence and convicted of an offence (*f*) under ss 4 or 5 of the Criminal Law Amendment Act, 1885 (*g*)

**Witnesses**

**1256** Upon prosecutions for incest under the Punishment of Incest Act, 1908 (*h*), the wife or husband of the accused may be

(*r*) Punishment of Incest Act, 1908 (8 Edw 7, c 45), Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s 1

(*s*) *Ibid.*, s 1

(*t*) *Ibid.*

(*u*) *Ibid.*

(*b*) *Ibid.*, s 2

(*c*) *Ibid.*, Penal Servitude Act, 1891, *supra*, s. 1

(*d*) Punishment of Incest Act, 1908 (8 Edw 7, c. 45), s. 3.

(*e*) 22 & 23 Vict. c 17

(*f*) Punishment of Incest Act, 1908 (8 Edw 7, c 45), s. 4 (1), (2), (3).

(*g*) 48 & 49 Vict. c 69, as to these offences, see p 614, *ante*

(*h*) 8 Edw 7, c 45

called as a witness either for the prosecution or the defence, and without the consent of the person charged (i).

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1257. All proceedings under the Punishment of Incest Act, 1908 (k), are to be held *in camera* (l). No prosecution for any offence under the Act can be commenced without the sanction of the Attorney-General, except in the case of a prosecution commenced by or on behalf of the Director of Public Prosecutions (m).

Proceedings  
*in camera*.  
Sanction  
necessary.

SUB-SECT 4 —*Indecent Assault*

1258. Any person is by statute (n) guilty of a misdemeanour who commits an indecent assault upon a female

Indecent  
assault.

The punishment is imprisonment with or without hard labour for not more than two years (o)

It is no defence to a charge of indecent assault upon a young person under the age of thirteen to prove that she consented to the act of indecency (p), but where she is above the age of thirteen, consent is a sufficient defence (q)

SUB-SECT 5 —*Abduction (r)*

1259 Where any woman of any age has any interest, legal or equitable, present or future, absolute, conditional, or contingent in

Abduction  
of heiresses  
etc.

(i) Punishment of Incest Act, 1908 (8 Edw 7, c 45), s 4 (4), but see p 614, note (r)

(k) 8 Edw 7, c 45

(l) *Ibid*, s 5

(m) *Ibid*, s 6

(n) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 52

(o) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offender may also be fined and required to find sureties for his good behaviour (Offences against the Person Act, 1861 (24 & 25 Vict. c 100), s 71) The offence is triable at quarter sessions

(p) Criminal Law Amendment Act, 1880 (43 & 44 Vict c 15), s 2. As to acts of gross indecency committed by a male person with another male person, see p 539, *ante*

(q) As to consent, see p 612, *ante* As to the cross-examination of the prosecutrix with respect to other acts of indecency committed with her consent, the principles stated on p 613 with respect to rape will apply to charges of indecent assault. As to admitting the unsworn evidence of children of tender years, see p 408, *ante* As to a court of summary jurisdiction dealing with an indecent assault on a person under sixteen, see Children Act, 1908 (8 Edw. 7, c 67), s. 128, and p 269, note, *ante*

(r) There are certain provisions as to the offence of abduction which although still remaining unrepealed may be said to have fallen into desuetude. The Statute of Westminster the Second (1285) (13 Edw 1, c 34) provides that of women carried away with the goods of their husbands, the King shall have suit for the goods so taken away (*ibid*, s 3), that if a wife willingly leave her husband and go away and continue with her adventurer, she shall lose her dower, unless her husband takes her back (*ibid*, s. 4). A punishment of three years' imprisonment is imposed upon a person who carries away a nun from her house, although with her own consent (*ibid*, s. 5). The rest of that part of the chapter of this statute which relates to rape is repealed by stat (1828) 9 Geo 4, c 31, s 1 By c 35 of the stat Westminster the Second (*supra*) it is provided that concerning children, males or females (whose marriage belongeth to another), taken and carried away, if the ravisher have no right in the marriage, though after he restore the child unmarried, he shall nevertheless be punished for his default by two years imprisonment; and if he do not restore, or do marry the child after the years of consent, and be not able to "satisfy for" the marriage, he shall abjure the

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any real or personal estate or is a presumptive heiress, coheiress, or one of the next of kin to anyone having such an interest, anyone is by statute (a) guilty of felony (1) who from motives of lucre takes away or detains such woman against her will with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, or (2) who fraudulently allures (b), takes away, or detains such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her with the like intent

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (c)

**Property of**  
**abducted**  
**woman.**

A person convicted of this offence is incapable of taking any interest or estate in any real or personal property of the woman or in any property which may come to her as heiress or next of kin (d)

If the offender has married the woman abducted, such property is, upon the conviction, to be settled in such manner as the Chancery Division of the High Court of Justice shall upon an information by the Attorney-General appoint (d)

**Consent**

As the offence consists in the abduction or detainer, it is no defence that the woman was at first taken away with her own consent, if she afterwards refuses to continue with the offender nor is it material that she was ultimately married or defiled with her own consent (e).

If the jury are not satisfied that the prisoner acted from motives of lucre, he cannot be convicted of the former of the offences above described (f)

**Abduction**  
**of woman**  
**with intent**  
**to marry,**  
**&c.**

**1260** Anyone is by statute (g) guilty of felony who by force takes away or detains against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (h).

**Taking or**  
**enticing away**  
**children**  
**under**  
**fourteen.**

**1261** Everyone is by statute (i) guilty of felony (1) who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away, or detains any child under the age of fourteen years with intent to deprive any parent, guardian, or other person having

realm or have perpetual imprisonment The remainder of this Act is repealed by the Civil Procedure Acts Repeal Act, 1879 (43 & 44 Vict. c. 59), s. 2

(a) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 53

(b) *R v Burrell* (1863), L. & C. 354

(c) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100) s. 53, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 The offence of abducting a woman or a girl is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 35), s. 1)

(d) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 53.

(e) 1 Hawk P. C., c. 16, Part II., ss. 7, 8 (8th ed., I., 124)

(f) *R. v Barratt* (1840), 9 C. & P. 387

(g) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 54.

(h) *Ibid*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1

(i) Offences against the Person Act, 1861, (24 & 25 Vict. c. 100), s. 56.



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the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about its person, or (2) who, with any such intent, receives or harbours any such child knowing it to have been by force or fraud so taken or decoyed away or detained.

The punishment for this offence is penal servitude for not more than seven or less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under sixteen years of age, he may be whipped (*h*)

No one is liable to prosecution for this offence who has claimed any right to the possession of the child so taken or decoyed away or detained, or who is the mother of the child or in the case of an illegitimate child claims to be the father of such child (*l*)

Fraud practised upon either the parent or the child is sufficient to establish the offence (*m*) A person who has been in possession of a child with the consent of its parents, but who unlawfully and against the will of the parents delivers it over to another person, detains the child In such a case falsehoods told to conceal how the child has been disposed of are evidence of the detainer being fraudulent (*n*)

**1262** Anyone is by statute (*o*) guilty of a misdemeanour who unlawfully takes or causes to be taken any unmarried girl under the age of sixteen years out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her

Abduction of  
girl under  
sixteen.

The punishment is imprisonment with or without hard labour for not more than two years (*p*).

**1263** A manual possession by the father or guardian need not be shown If the girl was a member of his family and under his control, it is sufficient If she leaves her father's house for a particular purpose with his sanction, she cannot legally be said to be out of his possession (*q*) The taking need not be by force or other actual or constructive (*r*), and the consent of the girl, if it has been obtained by the defendant's persuasions, is immaterial (*s*)

What con-  
stitutes  
abduction.

(*h*) Offences Against the Person Act, 1861 (24 & 25 Vict c 100), s 56, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*l*) *Ibid* Although the mother may not be convicted of this offence, she may it seems, be convicted of the offence of conspiring with someone else to take a child out of the possession of the person who has the lawful care of it, see *R v Duguid* (1906), 21 Cox, C C 200, C O R, *R v Crossman* (1908), 98 L T 760

(*m*) *R v Bellis* (1893), 17 Cox, C C 660, C O R

(*n*) *R v Johnson* (1884), 15 Cox, C C 481, C O R

(*o*) Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 55

(*p*) *Ibid.*, the defendant may also be fined and required to find sureties for good behaviour (*ibid*)

(*q*) *R v Mankletow* (1853), Dears C C 159, Jervis, C J

(*r*) *R v Mankletow*, *supra*, *R v Fraser* (1861), 8 Cox, C C 446, *R v Baillie* (1859), *ibid*, 238 (where the girl voluntarily left her home for an hour to be married and then returned, the marriage never having been consummated), *R v Mycock* (1871), 12 Cox, C C 28

(*s*) *R v Twissleton* (1668), 1 Lev 257, *R v Robins* (1844), 1 Car & Kir 456, *R v Mankletow*, *supra*, compare *R v Meadows* (1844), 1 Car & Kir 399, a case which it would appear difficult to reconcile with these and other authorities

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The defendant may be convicted, although he took no part in the actual removal of the girl, if he previously solicited her to leave her father, and afterwards received and harboured her when she did so (*t*). But if a girl leaves her father of her own accord, the defendant taking no active part in the matter and not persuading or advising her to leave, he cannot be convicted of this offence, even though he failed to advise her not to come, or to return, and afterwards harboured her (*a*).

The fact that the defendant believed upon reasonable grounds that the girl was sixteen years of age, affords no defence upon a charge of abduction (*b*).

**Girl found**  
**wandering**

A person who finds a girl wandering in the street and takes her away with him cannot be convicted of abducting her, in the absence of evidence that he knew that she was under the lawful care or charge of her father, mother, or any other person (*c*), nor can a person who takes possession of a child be convicted of this offence, if he honestly believes that he is entitled to the legal custody of the child (*d*).

**Temporary**  
**taking**

If the taking is intended to be temporary only, and for a purpose not inconsistent with the possession of the father, it does not necessarily amount to a taking out of his possession, but if a girl is taken away for the purpose of being detained for a time in order that she may cohabit with the defendant, the fact that he sent her back after a temporary cohabitation affords no defence (*e*).

**Taking from**  
**religious**  
**motive**

If a girl is taken out of the possession of a person having the lawful custody of her, the person so taking her may be convicted of abducting her, although he was influenced by religious or philanthropic motives (*f*).

**Illegitimate**  
**child.**

The offence is committed by anyone who takes a female illegitimate child from the custody of its mother or its putative father (*g*).

but for the fact that the defendant was herself a girl, and the two girls wandered away together. See the observations of MAULE, J., on this case in *R v Kippa* (1850), 4 Cox, C O 167, at p 168. The marginal note to *R v Meadows* is misleading, see the observations of the judges in *R v Mankletow* (1853), Dears C O 159, see also on this subject *R v Miller* (1876), 13 Cox, C O 179, LUSH, J.

(*t*) *R v Robb* (1864), 4 F & F 59, POLLOCK, C B, *R v Handley* (1859) 1 F & F 648, WIGHTMAN, J.

(*a*) *R v Olfier* (1868), 10 Cox, C O 402, BRAMWELL, B, *R v Jarvis* (1903), 20 Cox, C O 249, see, however the observations of ALDERSON, B, in *R v Liswell* (1847), 2 Cox, C C 279 which, it is submitted, are not in accordance with the views expressed by judges in the later cases.

(*b*) *R v Prince* (1875), L R 2 C O R 154.

(*c*) *R v Green and Bates* (1862), 3 F & F 274, *R v Hibbert* (1869), L R 1 C O R. 184.

(*d*) *R v Twinkler* (1859), 1 F & F 513, see also *R v Prince*, *supra*, at p. 175; and as to children under fourteen years of age, see Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 56, and p 620, *ante*.

(*e*) *R v Timmins* (1860), Bell, C O 276, *R v Basille* (1859), 8 Cox, C. C. 238.

(*f*) *R v Booth* (1872), 12 Cox, C C 231, QUAIN, J. "Though the statute probably principally aims at seduction for carnal purposes, the taking may be by a female with a good motive; though there may be such cases which are not immoral in one sense, I say that the act forbidden is wrong" (*R v Prince*, *supra*, per BRAMWELL, B, at p 174).

(*g*) 1 Hawk. P. C., c. 16, s. 14 (8th ed., 1, 128); 1 East, P. C. 457; *R v*.

## PART XII.—OFFENCES AGAINST THE PERSON.

The taking out of possession must be against the will of the father, mother, or other person having the lawful care or charge of the girl. A taking with the consent of the parent or guardian, if such consent is obtained by fraudulent misrepresentations, is a taking against his will (*h*).

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The fact that a parent has countenanced a lax, though not necessarily an immoral, course of life by the girl may in some cases be evidence that the taking out of his possession, though unknown to him, was not against his will (*i*).

**1264.** Everyone is by statute (*k*) guilty of a misdemeanour who, with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man or men, takes or causes to be taken such girl out of the possession and against the will of her father or mother or any other person having the lawful care or charge of her.

Abduction of  
girl under  
eighteen.

The punishment is imprisonment with or without hard labour for not more than two years (*a*).

It is a sufficient defence to such a charge, if it is made to appear to the court that the defendant had reasonable cause to believe that the girl was of or above the age of eighteen years (*b*).

### SECT. 3—Cruelty to Children (*c*).

**1265** Any person is at common law guilty of a misdemeanour who, being obliged by duty or contract to provide for an infant of tender years unable to provide for and take care of itself, whether such infant is the child, apprentice or servant of such person, refuses or neglects to provide sufficient food or bedding for such infant so as thereby to injure its health (*d*).

Neglect to  
provide food  
etc for  
infants

The punishment for this offence is fine and imprisonment without hard labour (*e*).

**1266.** Any master or mistress is by statute (*f*) guilty of a misdemeanour who, being legally liable to provide for his or her apprentice or servant necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully

Neglect to  
provide food  
etc for  
servants.

*Cornfort* (or *Cornforth*) (1742), 1 Bott and Const, Poor Laws, 6th ed, p 458, 2 Stra. 1162. As to the possession of the mother, see *R v Hopkins* (1806), 7 East, 579

(*h*) *R v Hopkins* (1842), Car & M. 254.

(*i*) *R v Primelt* (1858), 1 F. & F 50

(*k*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s 7. The cases already cited (pp 621, 622, *ante*) as to when a girl is to be considered in the possession of her parents, and as to what amounts to taking her out of such possession, apply to prosecutions under this section (see *R v Henkers* (1886), 16 Cox, C C 257). To warrant a conviction there must be evidence that she was induced by the defendant to leave her home (*R v Kauffman* (1904), 68 J. P. 189, BOSANQUET, K.C., Common Serjeant)

(*a*) Criminal Law Amendment Act, 1885, *supra*, s. 7.

(*b*) *Ibid.*

(*c*) For abduction of children, see p 620, *ante*.

(*d*) *R v. Friend* (1802), Russ & Ry. 20; *R v. Hogan* (1851), 2 Den. 277, C. O R.; *R v. Phillpott* (1853), 22 L J (M. C.) 113, C. O R.

(*e*) The offence is triable at quarter sessions

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s 26.

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**Cruelty to**  
**Children.**

and maliciously does or causes to be done any bodily harm to such apprentice or servant so that his life is endangered or his health is, or is likely, to be permanently injured.

The punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years. The defendant may also be fined and required to find sureties for good behaviour (g)

**Neglect of**  
**children**

**1267** Every person over the age of sixteen years is by statute (h) guilty of a misdemeanour who, having the custody, charge, or care (i) of any child or young person (k), wilfully assaults, ill-treats,

(g) Offences Against the Person Act, 1861 (24 & 25 Vict c 100), s 26, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The neglect to provide necessary food, clothing, medical aid or lodging to a servant or apprentice, if the master or mistress is legally bound to provide it, is also punishable summarily by a fine of £20 or imprisonment for six months (Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict c 86), s 6). The defendant has by s 9 a right to elect to be tried on indictment.

At common law, apart from any contractual liability to provide food, clothing and other necessities, the master of an apprentice who resides with him, or of a servant who is of tender years, or is so far under the master's restraint or dominion by helplessness of body or mind as to be unable to withdraw himself from his control, is liable to be indicted, if he wilfully neglects to supply such necessities, and if by reason of such neglect the apprentice or servant dies or is seriously injured in health. In such a case the indictment must allege the tender years or helplessness of the servant (*R v Gould* (1704), 1 Salk 381, *R v Self* (1776), 1 Leach, 137 (S C 1 East, P C 226), *R v Ridley* (1811), 2 Camp 650, *R v Smith* (1865), 11 C & P 607). A master is not, apart from contract, legally bound to provide medical attendance for his servant (*Wennall v Adney* (1802), 3 Bos & P 247, *Sellen v Norman* (1829), 4 C & P 80), but it is otherwise in the case of an apprentice living with the master (*R v Smith* (1837), 8 C & P 153).

(h) Children Act, 1908 (8 Edw 7, c 67), s 12 (1)

(i) A person who is the parent or legal guardian of a child or young person, or who is legally liable to maintain him, is to be presumed to have the custody of him, and as between father and mother the father is not to be deemed to have ceased to have the custody of the child or young person by reason only that he has deserted or does not reside with the mother, any person to whose charge a child or young person is committed by any person who has the custody of him is to be presumed to have charge of him, and any other person having actual possession or control of a child or young person is to be presumed to have the care of him (*ibid*, s 38 (2)), see *R v Connor*, [1908] 2 K B 26. In the case of an illegitimate child the father is not the "parent" of the child or a person "legally liable to maintain him," until he is declared to be so by affiliation proceedings instituted for that purpose (*Butler v Gregory* (1902), 18 T L R 370).

(k) "Child" for the purposes of the Act means a person under the age of fourteen years (*ibid*, s 131), "young person" in the Act means a person who is fourteen years of age and under the age of sixteen (*ibid*). Where in a charge or an indictment for an offence against the Children Act, 1908 (8 Edw 7, c 67), or against ss 27, 53, or 56 of the Offences against the Person Act, 1861 (24 & 25 Vict c 100), or any offence against a child or young person under ss 5, 42, 43, 42, or 62 of that Act, or against the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict c 34, 60 & 61 Vict c 52), or for any other offence involving bodily injury to a child or young person (except an offence under the Criminal Law Amendment Act (1865)), it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or above any specified age, and he appears to the court to have been so, at the date of the commission of the alleged offence, he is for the purposes of the Children Act, 1908 (8 Edw 7, c 67), to be presumed at that date to have been a child etc., unless the contrary is proved (*ibid*, s 123 (2)), see also *R v Cox*, [1898] 1 Q B 179, C C R.)

neglects, abandons, or exposes (*l*) such child or young person, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause him unnecessary suffering or injury to health (*m*).

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Children.

The punishment for this offence upon conviction on indictment is a fine of £100, or alternatively, or in default of payment of such fine, or in addition thereto imprisonment with or without hard labour for not more than two years (*n*). If it is proved that the accused was to his knowledge directly or indirectly interested in any sum of money payable in the event of the death of the child or young person, then in the case of a conviction on indictment the fine may be increased to £200, or in lieu of any other penalty the accused may be sentenced to penal servitude for five years (*o*).

**1268.** A parent or other person legally liable to maintain a child or young person is deemed to have neglected (*a*) him in a manner likely to cause injury to his health, if he fails to provide adequate food, clothing, medical aid, or lodging for him, or if being unable to provide it he fails to take steps to procure it under the Acts relating to the relief of the poor (*b*)

Meaning of  
neglect.

A person may be convicted of any of the above offences, notwithstanding that actual suffering or injury to health, or the likelihood thereof, was obviated by the act of another person (*c*), and notwithstanding the death of the child or young person (*d*).

The Children Act, 1908, does not take away or affect the right of any parent, teacher, or other person having the lawful control or

(*l*) To abandon or expose any child under the age of two years, whereby its life is endangered or its health permanently injured or likely to be so, is also a misdemeanour punishable by penal servitude for five years or imprisonment with or without hard labour for not more than two years (Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 27)

(*m*) Injury to health includes injury to or loss of sight or hearing or limb or organ of the body and any mental derangement (Children Act, 1908 (8 Edw 7, c 67), s 12 (1))

(*n*) Children Act, 1908 (8 Edw 7, c 67), s 12 (1) On summary conviction the punishment is a fine of £25, or in default of payment of or in addition to such fine six months' imprisonment with or without hard labour (*ibid*)

(*o*) Children Act, 1908 (8 Edw 7, c 67), s 12 (5) The accused is to be deemed to be interested in such sum of money, if he has any share in or any benefit from the payment of the money, although he is not the person to whom it is legally payable (*ibid*, s 12 (6)) A copy of a policy of insurance, certified by an officer or agent of the insurance company granting it to be a true copy, is *prima facie* evidence that the child or young person therein named has been insured, and that the person in whose favour the policy has been granted is the person to whom the money insured is legally payable (*ibid*, s 12 (7)) As to the disposal of the child or young person by order of court when the person having the charge or custody of him is convicted of cruelty, or committed for trial for that offence, see *ibid*, ss 21, 22, 23

(*a*) Neglect is the want of reasonable care, that is, the omission of such steps as a reasonable parent would take, and such as are usually taken in the ordinary experience of mankind. "Wilfully" means that the act is done deliberately and intentionally, not by accident or inadvertently, but so that the mind of the person who does the act goes with it (*R v. Senior*, [1899] 1 Q B 283, 291, O O R.). As to the common law obligation in these cases, see p 584, *ante*.

(*b*) Children Act, 1908 (8 Edw 7, c 67), s 12 (1). See title POOR LAW.

(*c*) *Ibid*, s 12 (2)

(*d*) *Ibid*, s 12 (3).

**SECT 8**  
**Cruelty to**  
**Children.**

Overlying  
child.

charge of a child or young person to administer punishment to him (e).

**1269** Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) whilst it was in bed with some other person over sixteen years of age, who was at the time of going to bed under the influence of drink, that person is deemed to have neglected the infant in a manner likely to cause injury to its health (f).

Procedure.

**1270** Upon the trial of any person over the age of sixteen indicted for the manslaughter of a child or young person of whom he had the custody, charge, or care the jury may convict him of one of the above-mentioned offences (g)

The wife or husband of a person charged with any of the above offences may be called as a witness, either for the prosecution or defence, and without the consent of the person charged (h)

Where any of the above-mentioned offences is a continuous offence, it is not necessary to specify in the indictment the date of the acts constituting the offence (i)

The Vexatious Indictments Act, 1859 (j), applies to misdemeanours under the Children Act, 1908 (k).

Dangerous  
performances

**1271** Where in the course of a public exhibition or performance which in its nature is dangerous to the life or limb of a male under the age of sixteen years or of a female under the age of eighteen years taking part therein any accident causing actual bodily harm occurs to any such person, the employer of any such male or female is liable to be indicted as having committed an assault, and the court may award compensation not exceeding £20 for the bodily harm so occasioned, to be paid by the employer to such person or to some person named by the court on his or her behalf (l)

(e) Children Act, 1908 (8 Edw 7, c 67), s. 37 See as to this right, p 608, *ante*.

(f) *Ibid.*, s 13.

(g) *Ibid.*, s 12 (4)

(h) *Ibid.*, s 27, Criminal Evidence Act, 1898 (61 & 62 Vict c 36), s 4 (1) The Children Act, 1908 (8 Edw 7, c 67), contains provisions as to the use of the deposition of a child or young person, and as to taking the evidence of a child of tender years in proceedings under that Act, or for any offence under ss 27, 55 or 56 of the Offences against the Person Act, 1861 (24 & 25 Vict c 100), or for any offence against a child or young person under ss 5, 42, 43, 52 or 52 of that Act, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict c 69), or any offence under the Children's Dangerous Performances Act, 1879 (42 & 43 Vict c 34), or under the Dangerous Performances Act, 1897 (60 & 61 Vict c 52), or any other offence involving bodily injury to a child or young person (Children Act, 1908 (8 Edw 7, c 67), ss. 28—31, and see p 408, *ante*)

(i) *Ibid.*, s 32 (4) But if dates are given, the court may refuse to allow the prosecution to adduce evidence of occurrences on other dates (*H. v. Miller* (1901), 65 J. P. 313)

(j) 22 & 23 Vict. c 17, as to which, see p 331, *ante*

(k) Children Act, 1908 (8 Edw. 7, c 67), s. 35

(l) Children's Dangerous Performances Act, 1879 (42 & 43 Vict c. 34), s. 3; Dangerous Performances Act, 1897 (60 & 61 Vict. c 52), s. 1 The former Act provides a penalty on summary conviction in cases where the performance is dangerous but no actual injury has been caused.

## PART XII.—OFFENCES AGAINST THE PERSON.

### SECT. 4.—Offences relating to Lunatics and Paupers.

**1272.** The offences of taking charge of a lunatic without authority, of illtreating lunatics, and other offences against the laws of lunacy, and the offence of procuring the marriage of paupers, and other offences against the poor laws, are dealt with in other parts of this work (*m*).

SECT. 4.  
Offences  
relating to  
Lunatics  
and  
Paupers.

## Part XIII.—Offences against Property.

### SECT. 1.—Taking Property.

#### SUB-SECT. 1.—Larceny.

##### (1) Definition and Punishment.

**1273** Larceny is the felonious taking of the property of another, without his consent and against his will, with intent to convert it to the use of the taker (*n*).

Definition of  
larceny.

Larceny is a felony, it is usually distinguished as being simple or compound. Compound larceny is simple larceny with aggravations of time, person, place, manner or subject-matter (*o*).

**1274** The punishment for simple larceny, or for any felony made punishable like simple larceny, except in cases otherwise provided for (*p*), is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years, and in the case of a male under the age of sixteen years, a whipping (*a*).

Punishment.

(*m*) See titles LUNATICS AND PERSONS OF UNSOUND MIND, POOR LAW, respectively.

(*n*) *R v Hammon* (1812), 2 Leach, 1083, 1089, see Bract, lib 2, cap 32 (1), "*furtum est secundum leges contractatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cuius res illa fuerit*" The former part of this definition is clearly taken from 4 Just Inst tit 1 (1).

(*o*) The former distinction of "grand" and "petty larceny" was abolished by stat 7 & 8 Geo 4, c 29, s 2, re-enacted by the Larceny Act, 1861 (24 & 25 Vict. c 96), s 2. As to compound larceny, see 4 Bl Com 240.

(*p*) These excepted cases are the following: Larceny after certain previous convictions, which is dealt with at p 628, *post*, of fixtures etc by tenants, seven years' penal servitude (p 639, *post*), by clerks or servants, fourteen years' penal servitude (p 644, *post*), by public officers, fourteen years' penal servitude (p 644, *post*), by officers of the Post Office, penal servitude for life or for seven years (p 645, *post*), of post letters by other persons, penal servitude for life or for fourteen years (p 644, *post*), of wills, penal servitude for life (p 642, *post*), of certain animals (see Vol I, title ANIMALS, p 368), of certain goods in process of manufacture, fourteen years' penal servitude (p 644, *post*), from vessels or boats in a haven, port, or navigable river, or canal, or from any dock, wharf, or quay adjacent thereto, fourteen years' penal servitude (Larceny Act, 1861 (24 & 25 Vict. c. 96), s 63); from wrecks etc, fourteen years' penal servitude (p 640, *post*). As to robbery and other larcenies from the person, see p 661, *post*, burglary and other larcenies from houses (p 668, *post*), sacrilege (p 675, *post*). As to the punishment of larcenies which are dealt with on summary conviction, see title MAGISTRATES.

(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), ss 4, 119; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s 1. Larceny is triable at quarter sessions, except when the punishment of penal servitude for life may be awarded on a first conviction, and except misdemeanours under ss 77-86 of the

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If the offender has been previously convicted of felony he may be sentenced to ten years' penal servitude, and if he be a male under the age of sixteen years, he may be whipped (b)

If the offender has been previously convicted of any indictable misdemeanour punishable under the Larceny Act, 1861 (c), or under any Act to be read with it, he may be sentenced to seven years' penal servitude, and in the case of a male under the age of sixteen years to a whipping (d)

If he has previously been twice summarily convicted under the Larceny Act, 1861 (e), or under the Malicious Damage Act, 1861 (f), whether such previous convictions were for offences of the same description or not, he is guilty of felony and may be kept in penal servitude for seven years, or imprisoned for two years with or without hard labour, and in the case of a male under the age of sixteen years may be whipped (g)

(11) *Constituents of Offense*

**Intention.**

**1275** To constitute larceny the taking must be felonious, i.e., with a wicked intention, *animus furandi*, and not under a claim of right made by the person taking (h)

**Claim of right.**

To prevent the taking from being felonious, the claim of right must be an honest one, though it may be unfounded in law or in fact. If the claim is not made in good faith, but is a mere colourable pretence to obtain or to keep possession, it will not avail as a defence (i)

Larceny Act, 1861 (24 & 25 Vict. c. 96), and the Larceny Act, 1901 (1 Edw. 7, c. 10)

(b) Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 7, 119. As to the mode of charging previous convictions, see s. 116

(c) 24 & 25 Vict. c. 96

(d) *Ibid.*, s. 8, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1

(e) 24 & 25 Vict. c. 96

(f) 24 & 25 Vict. c. 97

(g) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 9 (The other statutes mentioned in this section have been repealed.)

(h) 2 East, P. O. 659, 1 Hale, P. O. 506, 509, *R. v. Hall* (1828), 3 C. & P. 40<sup>n</sup>. The mere sale of pirated music is not larceny, notwithstanding s. 23 of the Copyright Act, 1842 (5 & 6 Vict. c. 45) (*R. v. Kidd* (1907), 72 J. P. 104). See title COPYRIGHT AND LITERARY PROPERTY, Vol. VIII, p. 167

(i) *R. v. Wade* (1869), 11 Cox, C. C. 549, BLACKBURN, J. If a man, with intent to steal the goods of another impounded for a distress, obtains the delivery of them to himself by proceedings in replevin, and then carries them away, he may be convicted of larceny, the replevin being *in fraudem legis* (3 Co. Inst. 108, 1 Hale, P. O. 507, 2 East, P. O. 660), see also *R. v. Farr* (1885), Kel. 43, where the prisoners, intending to rob the occupant of his goods, had fraudulently and without any right to a house obtained judgment in ejectment and were put into possession by the sheriff, and they were held rightly convicted of breaking into the house and stealing the goods in it. It should, however, be observed that in neither of these cases had there been a real adjudication in a civil court as to the ownership of the property in question, and see *R. v. Hemmings* (1864), 4 F. & F. 50, where the prosecutor, a creditor of the prisoner, assaulted him violently, and compelled him to give him a cheque on account of the debt, ERLE, C.J., held that the intent was not felonious. As to goods in the custody of the law, see *R. v. Knight* (1908), 25 T. L. R. 87, Q. C. A.



**1276.** To constitute larceny there must also be an intention to deprive the owner permanently of the goods taken, and the knowledge that they are not the goods of the person taking

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Where goods are taken by mistake or accident (*h*), or by a mere trespass, and there is at the time an intention to return them, and no subsequent intention to deprive the owner permanently of his property in the goods, there is no larceny (*l*)

Mistake or  
accident

When the goods taken have been realised, either by sale or pledging, and the proceeds appropriated by the prisoner, the fact that he intended ultimately, if he had the power to do so, to regain possession, and redeliver the goods to the owner is no defence, unless the accused not only had that intention at the time when he took the goods, but there was also then a strong probability and a belief on his part that he would have the power of regaining possession of and redelivering the goods (*m*)

Intention to  
redeliver.

It is not necessary to show that the taking was *lucra causâ* if it was fraudulent and with an intent wholly to deprive the owner of the property (*n*)

(*h*) 1 Hale, P C 507, 2 East, P O 661

(*l*) 1 Hale, P C 509, 2 East, P O 661 In the following cases the taking was held not to be felonious *R v Phillips* (1801), 2 East, P C 662, *R v Crump* (1827), 1 C & P 658 (horse taken from a stable wrongfully, ridden many miles, and left at another stable), *R v Webb* (1835), 1 Mood C C 431, *R v Holloway* (1844), 2 Car & Kir 942, *R v Poole* (1857), Dears & B 340 (workmen taking goods of their masters temporarily for the purpose of fraudulently increasing their rate of wages), compare *R v Hall* (1849), 2 Car & Kir 947, C C R, where a servant took his master's goods from one part of a warehouse to another and tried to sell them to the master, this was held to be larceny, see also *R v Manning* (1852), 6 Cox, C C 86, C C R, *R v Richards* (1844), 1 Car & Kir 532, *R v Dickinson* (1820), Russ & Ry 420 (taking away a girl's clothes in order that she might come for them, and so give the prisoner an opportunity to solicit her to commit fornication), *R v Bailey* (1872), L R 1 C C R 347 (taking warrants forcibly from a bailiff in order to defeat an execution, but a conviction on another count in the indictment, under s 30 of the Larceny Act, 1861 (24 & 25 Vict c 96), for fraudulently taking the warrants was held to be good), *Hewson v Gamble* (1892), 56 J P 534 (coffee taken by the vendor from an inspector who had bought it for analysis)

(*m*) *R v Wright* (1828), 9 C & P at p 554, n; *R v Phethem* (1840), 9 C & P 553, *R v Medlund* (1851), 5 Cox, C C 292, *R v Trebilcock* (1858), Dears & P 453

(*n*) *R v Cabbage* (1815), Russ & Ry 292 (where the object of the prisoner was only to destroy a stolen horse), *R v Wynn* (1848), 2 Car & Kir 879 C C R (letters and money thrown away by a postal official to prevent the discovery of a mistake in sorting), *R v Jones* (1846), 1 Den 188 (burning a letter supposed to contain an inquiry as to the prisoner's character)

• The case of a servant who improperly abstracted corn etc belonging to his master, for the purpose of improving the condition of the master's animals, formerly gave rise to some differences of opinion, but it is now provided by the Misappropriation by Servants Act, 1863 (26 & 27 Vict c 103), s 1, that if any servant shall, contrary to the orders of his master, take from his possession any corn or other food for the purpose of giving the same to any horse or other animal belonging to or in the possession of his master, he shall not be deemed guilty of felony, but shall be liable on summary conviction to imprisonment with or without hard labour for three months or a fine of £5 If the justices upon the hearing of the charge are of opinion that it is too trifling, or that it is inexpedient to inflict any punishment, they may dismiss the charge without convicting (*ibid*) If upon the trial of any servant for feloniously taking from

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## Asportation.

1277. There must be what amounts in law to an asportation (*i.e.*, a carrying away) of the goods of the prosecutor; but for this purpose, provided there is some severance, the least removal of the goods from the place where they were is sufficient, although they be not entirely carried off (*o*). The removal, however short the distance may be, from one position to another upon the owner's premises is a sufficient asportation (*p*), and so is a removal or partial removal from one part of the owner's person to another (*q*). But there must be a severance of the goods if fastened, however slight (*r*).

In cases where the asportation cannot be proved, but where the prisoner intended to steal and did some act in furtherance of that object, he may be convicted of attempting to steal (*s*).

The offence of larceny is complete when the goods have once been taken with a felonious intention, although the prisoner may have returned them and his possession continued for an instant only (*t*).

Finding lost  
articles.

1278 It is a felonious taking, and constitutes larceny, if the prisoner, finding goods which were lost, or supposed to be lost, and reasonably believing at the time that the owner can be found, appropriates them to his own use without making a reasonable attempt to find the owner (*a*). Although the finder may afterwards have intended to appropriate the goods whether the owner was found or not (*b*), or

his master any corn or other food consumable by horses or other animals the servant alleges that he took the same under such circumstances as would constitute an offence punishable under the last-mentioned Act and satisfies the jury thereof, the jury may return a verdict accordingly, and the court is to award such punishment as might be awarded by justices upon a conviction under the Act (*ibid*).

(*o*) 2 East, P C 555

(*p*) *R v Walsh* (1824), 1 Mood C O 14 (where the prisoner tried to remove a bag from the boot of a coach but did not succeed in getting it entirely out), *R v Coole* (1782), 1 Leach, 236 (parcel moved from one end of a waggon to the other), in both cases it was held that larceny had been committed, compare *R v Cherry* (1781), 1 Leach, 236, n (where the prisoner stood a bale of goods up on end, but apparently did not otherwise remove it from the spot on which it had been placed, this was held not to be such a removal as to constitute larceny)

(*q*) *R v Thompson* (1825), Mood. C O 78 (lifting a pocket-book an inch above the top of a pocket), *R v Simpson* (1854), Dears C O 421, *R v Laper* (1784), 1 Leach, 320

(*r*) 1 Hale, P O 508, 533, 2 East, P O 556 (where a case is mentioned in which goods were in a shop tied to a string and the prisoner, intending to steal them, removed them as far as the string would allow, this being held not to be such a severance as to constitute larceny), see, however, *R v Simpson, supra*. In *R v Farrell* (1787), 1 Leach, 322, n, the prosecutor, who was carrying a bed, was compelled by the prisoner's threats to put it on the ground, the prisoner intended to steal it, but before he could touch it, he was apprehended. It was held that this was not larceny. See *R v Cheeseman* (1862), Le & Ca. 140.

(*s*) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 9, see p. 373, *ante*.

(*t*) *R v Peat* (1781), 1 Leach, 228, 2 East, P C 557, and see *R v Greenaway* (1808), 72 J P 389, C O A -

(*a*) *R v Tharborn* (1849), 1 Den 387, *R v Kerr* (1837), 8 C. & P. 176, *Merry v. Green* (1841), 7 M. & W 623, *R v Rowe* (1859), Bell, C O 93, *R v Mortimer* (1908), 73 J. P 349, C O A

(*b*) *R v Matthews* (1873), 12 Cox, C O 489, C O R., *R v Preston* (1851), 2 Den 353; *R v Shea* (1856), 7 Cox, C O 147, C. O. R (Ir), *R v Christopher* (1858), Bell, C O 27; *R v Moore* (1861), Le & Ca. 1

may afterwards have believed that the owner could be found (c), he cannot be convicted, unless he had both that intention and belief at the time of the finding.

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**1279** At common law a taking is not felonious if the legal possession of the goods was originally obtained by the accused lawfully and without fraud or trespass, as upon a finding of the goods or upon a delivery in trust for, or on account of, the owner. In such a case, if the person who obtains the goods afterwards fraudulently converts them to his own use, he is not guilty of larceny at common law, unless by some new and distinct act of taking, as by wrongfully severing part of the goods from the bulk, he determines the bailment, and the special property thereby conferred upon him (d).

Larceny by a  
bailee.

As regards goods bailed, it is, however, provided by statute (e) that whoever, being a bailee (f) of any chattel, money, or valuable security, fraudulently takes or converts the same to his own use, or the use of any person other than the owner thereof, although he does not break bulk or otherwise determine the bailment, he is guilty of larceny and may be convicted thereof upon an indictment for larceny. This provision does not extend to any offence punishable on summary conviction (g).

An infant may be convicted as a bailee under the above provision (h), so also may a married woman (i), so also may a person who being intrusted with money to buy goods appropriates

(c) *R v Yorke* (1818), 2 Car & Kir 841, O C R (goods kept in the hope of obtaining a reward), as to which, see also *R v Peters* (1843), 1 Car & Kir 245 and *R v Gardner* (1862), Le & Ca 243, *R v Glyde* (1868), L R 1 O C R 139, *R v Draves* (1869), 11 Cox, C C 227, O C R (Ir), *R v Knight* (1871), 12 Cox, C C 102, O C R, *R v Dixon* (1855), 7 Cox, C C 35, C O R. In these cases, as there was no bailment, the common law rule prevailed, that to constitute larceny there must have been a felonious intention at the time of the original taking.

The principles which govern the case of larceny of goods found do not apply to articles which are left by passengers in railway carriages. It is the duty of the servants of the railway company to report the finding of such goods to their superiors, and to deliver them up, and if, instead of doing so, they appropriate them to their own use, they are guilty of larceny (*R v Pierce* (1852), 6 Cox, C C 117, WILLIAMS, J.). The same principle no doubt applies to cab drivers and omnibus conductors (see *R v Lamb* (1694), 2 East, P C 664, *R v Wynne* (1786), 1 Leach, 413, and as to the metropolis, London Hackney Carriage Act, 1853 (16 & 17 Vict c 33), s 11, Metropolitan Public Carriage Act, 1869 (32 & 33 Vict c 115), s 9 (5), and the order of the Secretary of State made thereunder). As to the duty of a person who finds a stray dog, see Dogs Act, 1906 (6 Edw. 7, c 32), s 4.

(d) 2 East, P C 554, 693 *et seq.*

(e) Larceny Act, 1861 (24 & 25 Vict. c 96), s 3.

(f) As to the various kinds of bailments, see title BAILMENT, Vol I, p 624.

(g) Larceny Act, 1861 (24 & 25 Vict c 96), s 3, *R v Daynes* (1873), 12 Cox, C C 514, C. C. R. As to what larcenies are punishable on summary conviction, see Summary Jurisdiction Act, 1879 (42 & 43 Vict c 49), s. 12, Summary Jurisdiction Act, 1899 (62 & 63 Vict c 22), s 2.

(h) *R. v. McDonald* (1885), 15 Q. B D 323, C. C. R.

(i) *R. v Robson* (1861), Le. & Ca 93; see, however, *R. v Denmour* (1861), 8 Cox, C. C. 440. Any doubt there may have been on the matter seems now disposed of by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), see title HUSBAND AND WIFE. A bailment by contract is not essential; a bailment by licence is sufficient to bring the case within the statute (*R. v. Robson, supra*, *R v. McDonald, supra*).

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either the money or the goods to his own use (*k*), or one who having received goods for sale or upon which to raise an advance appropriates the proceeds (*l*)

The deposit of money under such circumstances as to constitute a mere debt, or where the money is to be mixed with other moneys and the same coins are not to be returned, is not a bailment within the meaning of the above provision (*m*).

Evidence of conversion which would be sufficient to support an action of trover will not necessarily justify a conviction for larceny by a bailee, even, though a fraudulent intention be proved, it must be shown that an act was done by the prisoner inconsistent with the purposes of the bailment and analogous to larceny, and there must be a definite time when the act of conversion can be said to have taken place (*n*)

**Larceny by**  
**a bailee.**

A servant having the manual custody of his master's goods is not a bailee of them. His possession is in law the possession of the master, and if he misappropriates the goods, he is guilty of larceny at common law (*o*)

If a person has the bare use (*p*) or custody (*q*) of a thing, or receives goods or money from another who intends to remain present all the time they are in the manual possession of the prisoner, and the owner has no intention to part with the property, such a person is not a bailee (*r*).

In each of these cases the legal possession of the goods or money remains in the owner, and the person appropriating them is guilty of a common law larceny.

If goods are obtained by fraud from a carrier or a mere

(*k*) *R v Bunhall* (1864), *Le & Ca* 371, *R v Aden* (1873), 12 Cox, C C 512, O C R

(*l*) *R v De Banla* (1884), 13 Q B D 29, C C R *R v Holloway Prison (Governor), Ex parte George* (1897), 18 Cox, C C 631, and see *R v Richmond* (1873), 12 Cox C C 495, C C R, *R v Henderson* (1870), 11 Cox, C C 593, C C R, *R v Tomkinson* (1881), 14 Cox, C C 603, C C R, *R v Oxenham* (1876), 13 Cox, C C 349 C C R

(*m*) *R v Hassall* (1861), *Le & Ca* 58, *R v Hoare* (1859), 1 F & F 647, WIGHTMAN, J, *R v Garrett* (1860) 2 F & F 14

(*n*) *R v Jackson* (1864), 9 Cox, C C 505, where MARTIN, B, held that a prisoner to whom a coat had been lent for a day, and who was found wearing the coat some days afterwards on a ship bound for Australia, had not converted it within the meaning of the statute, see also *R v Weekes* (1866), 10 Cox, C C 221, *R v Cosser* (1876), 13 Cox, C C 187, *R v Oxenham* (1876) 13 Cox, C C 349, C C R

(*o*) *R v Murray* (1830), 1 Mood C C 276, *R v Jones* (1842), *Car & M.* 611, *R v Watts* (1850), 2 Den 14, *R v Cooke* (1871), *L R 1 C C R* 295. If a servant receives the property for his master and appropriates it before it comes to the possession of his master, the offence is embezzlement. As to larceny and embezzlement by servants, see pp 644, 649, *post*

(*p*) 1 Hale, P C 506, 2 East, P C 682

(*q*) *R v Jones* (1842), *Car & M.* 611, CRESSWELL, J, *R v Harvey* (1840), 9 C & P. 353, ALDERSON, B, *R v McNames* (1832), 1 Mood C C 368. But a doubt was expressed in *R v Hey* (1849), 1 Den 602, 604, as to whether *R v McNames* was rightly decided on the ground that the prisoner in that case was a general drover and not the servant of a particular employer, and was therefore a bailee. The law with reference to larceny by a bailee had not been altered at this date.

(*r*) 2 East, R. C. 683; *R v Thompson* (1862), 9 Cox, C. C. 244, O C R.

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custodian, or from the owner's servant who has no general or special authority from his master to sell or to pass the property in the goods, the person so obtaining them is guilty of larceny even though the carrier, custodian, or servant intended or purported to pass the property, for he had no power to do so, both the property and the legal possession remaining in the owner (s)

**1280** A taking amounts to larceny if possession is obtained from the owner by trick or by fraud (t), the prisoner at the time when he obtains such possession intending to steal the goods, provided that the owner did not intend to part with his entire property in the goods but only with the temporary possession (a)

Larceny by a  
 trick.

(s) *R v Jackson* (1826), 1 Mood. C O 119, *R v Longstreeth* (1826), 1 Mood. C O 137, *R v Prince* (1868), L R 1 C O R. 150, *R v Robins* (1854), Doars. C O 418, *R v Sheppard* (1839), 9 O & P 121, *R v Small* (1837), 8 O & P 46, compare *R v Stewart* (1845), 1 Cox, C O 174, 176 The fraudulent conversion of property or the proceeds thereof by a person intrusted with such property, or who has received it for or on account of any other person, is also a statutory misdemeanour (Larceny Act, 1901 (1 Edw 7, c 10), s 1) As this offence does not amount to larceny, it is dealt with at p 660, *post*. As to a fraudulent conversion by a person intrusted with property under a power of attorney, see Larceny Act, 1861 (24 & 25 Vict c 96), s 77, p 659, *post* As to factors or agents fraudulently dealing with property of their principals, see *ibid*, s 78, and p 658, *post*

(t) As to obtaining possession by force or by putting the owner in fear, see p 661, *post*

(a) 1 Hawk P C, c 33, ss 14 *et seq*, *R v Semple* (1786), 1 Leach, 420, 424, *R v Campbell* (1827), 1 Mood C O 179, *R v Gilbert* (1828), 1 Mood C O 185, *R v Stewart* (1845), 1 Cox, C O 174, *R v Small* (1837), 8 O & P, 46, *R v Box* (1839), 9 O & P 126, *R v Cohen* (1851), 2 Den 240, *R v Pratt* (1830), 1 Mood C O 250, *R v Slowly* (1873), 12 Cox, C O 269, C O R., *R v Russell*, [1892] 2 Q B 312, C O R., *R v Buckmaster* (1887), 20 Q B D 182, C O R., *R v Hollis* (1883), 12 Q B D 25, C O R. The cases illustrating the principle enunciated in the text may be classified as follows —

Possession of goods obtained by a pretended intention to purchase (*R v Campbell, supra*, *R v Box, supra*, *R v Cohen, supra*, *R v Pratt, supra*, *R v Gilbert, supra*; *R v Slowly, supra*, *R v Savage* (1831), 5 J & P 143, *R v Russell, supra*, *R v Webb* (1850), 5 Cox, C O 154, *R v Small, supra*, *R v Sharpless* (1772), 1 Leach, 92)

Possession obtained by a temporary hiring (*R v Pear* (1779), 1 Leach, 212, *R v Cole* (1847), 2 Cox, C O 340, *R v Semple, supra*, *R v Janson* (1849), 4 Cox, C O 82, *R v Brooks* (1838), 8 O & P 295)

Possession intrusted for the purposes of sale (*R v Waller* (1865), 10 Cox, C O 360, and see *Oppenheimer v Attenborough*, [1907] 1 K B 510, [1906] 1 K B 221, C A., and *Oppenheimer v Fraser and Wyatt*, [1907] 1 K B 519, [1907] 2 K B 60, C A.)

Possession intrusted for inspection (*R v Rodway* (1841), 9 O & P 784), of a bill for the pretended purpose of getting it discounted (*R v Arkles* (1784), 1 Leach, 294), of bank notes for the purpose of getting or giving change (*R v Oliver* (1811), cited at 2 Leach, 1072, *R v Williams* (1834), 6 O & P 390, *R v Johnson* (1851), 2 Den. 310), of money to pay to another person (*R v Brown* (1856), Deans. C O 616)

Possession obtained by personating another person (*R v Kay* (1857), 7 Cox, C O 289, C O R., *R v Gillinge* (1858), 1 F & F 36, *R v Longstreeth* (1826), 1 Mood. C O 137)

Possession obtained by "ringing the changes" (*R v McKale* (1868), L R. 1 C. O. R. 125, *R v Hollis* (1883), 12 Q. B. D. 25, C O R., and see *R v Greenwood* (1908), 72 J. P. 389, C O A.).

Cases of "welshing" (*R v Robson* (1820), Russ. & Ry. 413, *R v Buckmaster* (1887), 20 Q B D 182, C O R.)

"Ring-dropping" (*R v Patk* (1782), 1 Leach, 238, *R v Marsh* (1784),

**SECT. 1.**  
**Taking**  
**Property.**

If money or goods are obtained by a fraudulent trick or pretence, but the owner, being deceived by the pretence, intends to part with his property in the money or goods, the offence is that of obtaining by false pretences, and not larceny (b)

**Husband and**  
**wife.**

**1281.** Every married woman has by statute in her own name against all persons whomsoever, including her husband (subject as regards her husband to the proviso stated below), the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property as if it belonged to her as a *feme sole*, and it is sufficient to allege in the indictment that the property is her property (c)

A husband may be indicted for stealing the goods of his wife, provided that no criminal proceeding can be taken by any wife against her husband while they are living together in respect of any property claimed by her, nor, while they are living apart, with regard to any act done by the husband, while they were living together, concerning property claimed by her, unless such property has been wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife (d)

Similarly a wife is punishable criminally for stealing the goods of her husband. A wife doing any act with respect to any property of her husband which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under the Married Women's Property Act, 1882 (e), is in like manner liable to criminal proceedings by her husband (f)

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1 Leach, 345, *R v Moore* (1784), 1 Leach, 314, *R v Watson* (1794), 2 Leach, 640

Possession obtained from a servant having no general authority, or no power to pass the property (*R v Robins* (1804), 6 Cox, O C 420, O O R., *R v Wilkins* (1789), 1 Leach, 520, *R v Stear* (1848), 1 Den 349, *R v Sheppard* (1839), 9 C & P 121, *R v Little* (1867), 10 Cox, O C 559, in which case, a carman having delivered goods by mistake to the prisoner, it was held that the latter might be convicted of larceny by fraudulently appropriating them, *R v Longstreth* (1826), 1 Mood C C 137, *R v Webb* (1850), 5 Cox, O C 154, *R v Small* (1837), 8 C & P 46)

(b) *R v Solomons* (1890), 17 Cox, O C 93, C C R., *R v Wilson* (1837), 8 C & P. 111, *R v Carter* (1883), 47 J P 759, C O R., *R v Colman* (1785), 1 Leach, 303, n., *R v Harvey* (1787) 1 Leach, 467, *R v Barnes* (1850), 2 Den 59, *White v Garden* (1851), 10 O B 919 927. This rule applies, where goods are obtained by the forged or pretended order of a customer (*R v Adams* (1844), 1 Den 38, *R v Atkinson* (1799), 2 East, P O 673), or where any credit is given to the prisoner or payment made on account by him, though by a cheque which is dishonoured (*R v Parkes* (1791), 2 Leach, 614, *R v North* (1861), 8 Cox, C O. 433, *R v Harvey*, *supra*). If there is either an agreement, or a custom of the particular trade, that goods sold shall be paid for on delivery, and the prisoner fraudulently obtains possession without making the payment, it is larceny (*R v Gilbert* (1828), 1 Mood C O. 185, *R v Harvey*, *supra*; and see the cases cited in note (a), p. 633, *ante*)

(c) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12. As to the effect of ss. 12 and 16 of this Act in the case of receiving goods stolen by the husband from the wife, or *vice versa*, see p. 683, and title HUSBAND AND WIFE. As to laying the property in the wife, see *R v Murray*, [1906] 2 K B 385, O O R.

(d) *Ibid.*, s. 12

(e) 45 & 46 Vict. c. 75.

(f) *Ibid.*, s. 16. The above-mentioned proviso in s. 12 applies equally to

**1282.** If any person, being a member of a partnership or one of two or more beneficial owners (g) of any money, goods, or other property, steals or embezzles such property, he is by statute (h) liable to be tried, convicted, and punished for the same as if he had not been a member of the partnership or one of such beneficial owners.

SECT. 1.  
Taking  
Property.

Larceny  
by partner  
or joint  
owner.

Persons are joint beneficial owners within the meaning of the statute constituting this offence, if they form an association for an object which is not criminal, although by reason of non-compliance with statutory regulations the association does not constitute a legal entity (i).

Any person is a joint beneficial owner for this purpose who has an interest of any kind in the proper disposition or distribution of the property other than that of a mere trustee or agent (k).

**1283** A man may be convicted of stealing his own goods, if such goods are in the possession of his bailee and the intention of the accused is either fraudulently to charge the bailee with the loss of the goods or, in cases where the bailee has a right to possession as against the accused, to deprive the bailee of his special property in the goods (l).

Larceny of  
goods not in  
the possession  
of owner

the case of the taking by a wife of the goods of her husband (*R v James*, [1902] 1 K B 540, 543, C O R), the indictment need not in either case allege that the conditions in the proviso exist, nor need the prosecution prove affirmatively that they do exist in the absence of any evidence offered by the defendant of facts which would establish a defence under the proviso (*ibid*). At common law the wife could not steal the husband's goods, whether she had committed adultery or not, a person acting in concert with her, if she had not committed adultery, could not at common law be convicted of larceny of her husband's goods, but where an adulterer, acting in concert with the wife, knowingly took the husband's goods, he was held guilty of larceny, the effect of the adultery being to revoke the wife's authority to dispose of her husband's goods (*R v Kenny* (1877), 2 Q B D 307, *R v Featherston* (1854), 23 L J (M C) 127, C O R, *R v Berry* (1859), Bell, C C 95, *R v Deer* (1862), 32 L J (M C) 33, C O R).

(g) As to trustees, see p 658, *post*

(h) Larceny Act, 1868 (31 & 32 Vict c 116), s 1. As to frauds and other crimes committed by members of certain banking co-partnerships within the meaning of the Joint Stock Banks Act, 1838 (1 & 2 Vict c 96), or formed under the Bank of England Act, 1833 (3 & 4 Will 4, c 98), see the Joint Stock Companies Act, 1840 (3 & 4 Vict c 111), s 2. At common law it was not a criminal offence for one co-owner of goods fraudulently to deprive the other co-owners of them, such co-owner being lawfully in possession (1 Hale, P C 513), but if he took them from a person who was a bailee for all the co-owners, he could be convicted of larceny (*R v Bramley* (1822), Russ & Ry 478), even though the bailee were himself one of the co-owners (*R v Webster* (1861), Le & Ca 77, and this is still the law in any case which cannot be brought within the Larceny Act, 1868 (31 & 32 Vict c 116)).

(i) *R v Tankard*, [1894] 1 Q B 548, C O R. A society which is not formed for the acquisition of gain is not a co-partnership within the meaning of the section (*R v Robson* (1885), 18 Q B D 137, C O R); but if, in that case, the prisoner had been indicted in a second count as one of several joint beneficial owners, the conviction could have been upheld; see *R v Tankard*, *supra*, *R v Neat* (1899), 19 Cox, C O 424, C O R.

(k) *R v Neat*, *supra*.

(l) 4 Just. Inst. tit. 1, s. 10; 1 Hale, P. O. 513, 1 Hawk. P O, c 33, s. 47; *Stafford v. Pooler* (1594), Cro Elms 536, *R v Wilkinson* (1821), Russ & Ry. 470; *R v Bramley* (1822), Russ. & Ry. 478; *R v Wadsworth* (1867), 10



## SECT. 1

**Taking  
Property.**

Goods  
delivered by  
mistake.

**1284** If, by a mistake of the owner, property is delivered to a person to a greater amount than he is entitled to receive, and such person, at the time when he receives it, is aware of the mistake and fraudulently appropriates such property, he is guilty of larceny although he did nothing to cause the mistake (*m*)

If the person accepting the delivery is ignorant of the mistake at the time of delivery, but upon afterwards discovering it fraudulently appropriates the property, it is uncertain whether or not he is guilty of larceny (*n*)

The taking.

**1285** The taking must be against the will of the owner of the property. But where, with the view of arresting a suspected thief, facilities are intentionally afforded to him for obtaining access to property and he avails himself of such facilities and takes such property, the taking amounts to larceny (*o*).

(iii) *Subjects of Larceny*

Value.

**1286** An article, to be the subject of larceny, must be of some appreciable value (*p*), but it need not be of the value of any known coin (*q*), and it is sufficient, if it is of value only to the prosecutor (*r*).

At common law, money and all personal chattels in possession, which are by law the subject of property and which are of any definite value, can be the subjects of larceny.

Statutory  
larceny

**1287** There are many things which could not have been the subject of larceny at common law but have by statute been made the subject of larceny

Land.

**1288** Land could not at common law, and cannot now, be the subject of larceny (*s*)

(Cox, C C 557. According to some of the judges in *R v Wilkinson* (1821), Russ & Ry 470, it is larceny in such a case, even though the intent is to defraud not the bailee but some third person. As to stealing goods in the custody of a sheriff, see *R v Knight* (1906), 73 J P 15, C C A.

(*m*) *R v Middleton* (1873), L R 2 C C R, 38, *R v Flowers* (1886), 16 Q B D 643, C C R.

(*n*) *R v Ashwell* (1885), 16 Q B D 190, C C R, where fourteen judges were equally divided, but in *R v Flowers*, *supra*, Lord COLERIDGE, C J, MANISTY, J, and HAWKINS, J, stated that in *R v Ashwell* none of the judges intended to question the ancient doctrine that an innocent receipt of a chattel and its subsequent fraudulent appropriation do not constitute larceny, see also *R v Mucklow* (1827), 1 Mood C C 160, *R v Davies* (1836), Dears C C 640, *Cartwright v Green* (1803), 8 Ves. 405, *Merry v Green* (1841), 7 M & W 623, *R v Riley* (1863), Dears C C 149 (where, however, possession was obtained by a trespass, though an innocent one), Stephen, Digest of the Criminal Law, 5th ed., 261.

(*o*) *E v Norden* (undated), Post 129, *R v Egginton* (1801), 2 Leach, 913, *R v Williams* (1843), 1 Cal & Kir 195, but as to such attempts to entrap a receiver, see p 679, note (*z*), *post*.

(*p*) Formerly it appears to have been held that this value must be intrinsic, and not from the relation which the chattel bore to some other thing as in the case of deeds, covenants, and other securities for debts (1 Hawk. P C, c 33, s. 35, *E v Westbeer* (1740), 2 Stra 1133), but see now the cases mentioned in the following note in which the articles stolen were pieces of paper of no real intrinsic value.

(*q*) *R v Bingley* (1833), 5 C & P. 602, GURNEY, B, *R v Morris* (1840), 9 C & P 849, PARKE, B.

(*r*) *R v Clarke* (1810), 2 Leach, 1036, 1039.

(*s*) 1 Hale, P C 510. As to the definition of "property" in the Larceny Act, 1861, see *ibid.*, s. 1, and note (*a*), p 684, *post*.



### PART XIII.—OFFENCES AGAINST PROPERTY.

At common law neither deeds relating to land (i) nor the chest in which they are kept (a) can be the subject of larceny, as they savour of the realty and descend to the heir-at-law. But now anyone is by statute (b) guilty of a felony who steals or for any fraudulent purpose destroys, cancels, obliterates or conceals the whole or any part of any document of title to lands (c).

**SECT. 1.**  
**Taking**  
**Property.**  
**Deeds.**

The punishment for this offence is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years (d).

**1289** Trees, growing crops, fruit, and similar vegetable produce are not, while they are still annexed to the land, the subjects of larceny, but it is larceny at common law to take them after they have been severed from the land either by the owner or by any other person, even the thief himself, provided, in the case of the thief, that the severance and the taking are not one continuous act (e).

**Larceny of**  
**trees etc**

By statute (f) everyone is guilty of felony who steals, or cuts, breaks, roots up, or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the value of the article stolen or the amount of injury done exceeds £1.

(i) 1 Hale, P. C. 510, *R v Westheer* (1740), 2 Stra 1133.

(a) 3 Co Inst 109.

(b) Larceny Act 1861 (24 & 25 Vict. c. 96), s. 28, see also s. 27, and the definition of "valuable security" in s. 1, p. 642, *post*. It is sufficient for the indictment to allege that the document is or contains evidence of the title of a person having an interest vested or contingent, legal or equitable, in the real estate to which it relates, and to mention such real estate or some part thereof (*ibid.*). The words "document of title to lands" include any deed, map, paper, or parchment, written or printed, being or containing evidence of the title or any part of the title to any interest in or out of any real estate (*ibid.*, s. 1). The accused cannot be convicted if he has at any time previously to his being charged with such offence first disclosed such act or offence on oath in consequence of any compulsory powers of any court in any action instituted by a party aggrieved, or if he has first disclosed such act in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy (*ibid.*, s. 24). See p. 643, *post*, where the terms of this protection are more fully stated. The taking of title deeds must be such a taking as would in the case of an ordinary chattel amount to larceny (*R v John* (1830), 7 C. & P. 324).

(c) The fraudulent purpose should be stated in the indictment (*R v Morris* (1839), 9 C. & P. 89, ALLERSON, B.).

(d) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 28, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(e) 1 Hale, P. C. 510, 1 Hawk. P. C. c. 33, s. 21, *Lee v Rusdon* (1816), 7 Taunt 188, 191. It is for the jury to say whether or not the severance and the subsequent taking constituted one continuous act, and if they find that the prisoner severed the tree or other growth with intent afterwards to steal it, but that, being interrupted, he went away and then returned and took it away without ever intending to abandon his possession of it, he cannot be convicted of larceny at common law (see *R v Townley* (1871), L. R. 1 C. C. R. 315, 320). That case had reference to the larceny of dead wild rabbits, but as regards vegetable produce the subject-matter is so fully covered by statute that the question is not now likely to arise.

(f) Larceny Act, 1861 (24 & 25 Vict. c. 96) s. 32.

**SECT. 1.**  
**Taking**  
**Property.**

The punishment for this offence is the same as in the case of simple larceny (*g*)

Anyone who steals etc a tree etc growing elsewhere than in the before-mentioned situations, if the value of the tree etc. or the amount of injury exceeds £5, is guilty of felony and is liable to the same punishment as in the case of simple larceny (*h*).

If either the value of the tree etc wherever it may have been growing, or the injury done, exceeds one shilling but does not amount to £5, the offender is punishable for a first and second offence upon summary conviction (*i*) Everyone is by statute (*k*) guilty of a felony who, having been twice summarily convicted of this offence, commits such offence a third or subsequent time. The punishment is the same as in the case of simple larceny (*l*).

**Larceny of**  
**plants etc**

**1290** Everyone who steals, or destroys or damages with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure-ground, nursery-ground, or greenhouse, is liable on summary conviction to imprisonment with or without hard labour for not more than six months, or to pay over and above the value of the article stolen or the amount of the damage done a sum not exceeding £20 (*m*) A person who commits a second offence of this kind is guilty of felony and punishable in the same manner as in the case of simple larceny (*n*)

**Larceny of**  
**ore or coal**  
**from mines,**

**1291** To take ore or coal from mines is not larceny at common law, but everyone is by statute (*o*) guilty of felony who steals, or seizes with intent to steal, the ore of any metal, or any lapis calaminarius (*p*), manganese or mundick, or any wad, black cawke (*a*), or black lead, or any coal or cannel coal from any mine, bed or vein thereof

This offence is punishable by imprisonment with or without hard labour for not more than two years (*b*)

(*g*) As to which, see p 627, *ante*

(*h*) Larceny Act, 1861 (24 & 25 Vict c 96), s 32 As to the punishment for simple larceny see p 627, *ante* In cases of this kind where several trees etc. have been stolen or injured with that intent at one and the same time so that the taking was a continuous act, the value of or the damage done to the different trees may be added together to make up the amounts mentioned in the section (*R v Shepherd* (1868), L R 1 Q C R 118)

(*i*) See title MAGISTRATES

(*k*) Larceny Act, 1861 (24 & 25 Vict c 96), s 33

(*l*) *Ibid*

(*m*) *Ibid*, s 36. Stealing any part of a live or dead fence, rail, stile, or gate is punishable on summary conviction only (*ibid*, ss. 34, 35) Fruit trees are not plants or vegetable productions within the meaning of s 36 (*R v Hodges* (1829),<sup>o</sup> Mood. & M. 341) Stealing cultivated roots or plants used for the food of man or beast, or for medicinal, distilling, dyeing, or manufacturing purposes, and growing in land which is not a garden etc., is punishable on summary conviction (s. 37).

(*n*) *Ibid*, s 36 As to the punishment of simple larceny, see p 627, *ante*.

(*o*) *Ibid*, s 38

(*p*) *I.e.*, calamine or ore of zinc

(*a*) "Cawke" is sulphate of barytes; "wad" is a local name for plumbago.

(*b*) Larceny Act, 1861 (24 & 25 Vict c. 96), s. 38. Where mining has been carried on by a lessee from one shaft, and ore or coal has been taken by him illicitly from a number of different adjacent owners, the taking extending over

## PART XIII.—OFFENCES AGAINST PROPERTY.

Any person employed in or about any mine is by statute (c) guilty of felony who takes, removes, or conceals any ore of any metal, or any mineral, found or being in such mine, with intent to defraud any proprietor of, or adventurer in such mine, or any workman or miner employed therein

**Stat. 1.  
Taking  
Property.**

The punishment is imprisonment with or without hard labour for not more than two years (d).

**1292** Fixtures were not the subject of larceny at common law (e). Anyone is by statute (f) guilty of a felony who steals, rips, cuts, severs, or breaks, with intent to steal, (1) any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or of other material or of both, fixed in or to any building whatsoever, or (2) any thing made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground. The punishment is the same as in the case of simple larceny (g).

**Larceny of  
fixtures.**

Upon the trial of an indictment for the statutory offence it must be shown that the prisoner was a party to the actual severance of the fixture. If he stole it after the severance, he cannot be convicted either of the statutory offence or of simple larceny upon an indictment for the statutory offence (h).

**1293** Everyone is by statute (i) guilty of felony who steals any chattel or fixture let to be used by him in or with any house or lodging, whether the contract has been made by him or by any person on his behalf.

**Larceny by  
tenants**

a considerable period of time, evidence as to the taking from all the adjoining owners is admissible to prove the prisoner's knowledge that he has gone out of his boundary in the particular case which is the subject of investigation (*R v Bleasdale* (1848), 2 Car & Kir 765), and it would appear that in such a case the indictment may allege a stealing from all the different owners, and that the prosecution will not be called upon to allege upon which taking they will proceed (*ibid*).

(c) Larceny Act, 1861 (24 & 25 Vict c 96), s 39

(d) *Ibid*

(e) But articles, such as window sashes, not permanently fixed but secured temporarily in their places by laths nailed across them, were not regarded as fixtures within this rule (*R v Hedges* (1779), 1 Leach, 201)

(f) Larceny Act, 1861 (24 & 25 Vict c 96), s 31. In the case of a fixture in a square, street, or place for public use or ornament the indictment need not allege that it is the property of any person (*ibid*). A cartshed is a "building" within the meaning of the section (*R v Worral* (1838), 7 C & P 616, *LITTLEDALE, J*), the indictment need not allege that the erector to which the fixture was fastened was a "building" if the evidence shows it to have been such (*R v Rice* (1859), Bell, O O 87). As to what is a dwelling house within the meaning of the section, and evidence of the ownership of it, see *R v Brummitt* (1861), Ls. & Ca. 9, *R v Finch* (1834), 1 Mood. O O 418. Metal fixed on a post let into the ground is "metal fixed in land" (*R v Jones* (1858), Dears & B 555). See also *R v Cooper* (1908), 24 T L R 867, C. C. A.

(g) As to the punishment of simple larceny, see p 627, *ante*.

(h) *R v Gooch* (1838), 8 C & P 293

(i) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 74. The tenant being in lawful possession was not guilty of larceny at common law, if he appropriated either a

**SECT. 1.**  
**Taking**  
**Property.**

The punishment for this offence is imprisonment with or without hard labour for not more than two years, and if the offender is a male under the age of sixteen years, he may be sentenced to a whipping. In case the value of the chattel or fixture exceeds £5, the offender may be sentenced to penal servitude for seven years (*h*).

If the article alleged to have been stolen is a chattel, the indictment may be in the common form as for larceny, if it is a fixture, the indictment may be in the same form as if the accused were not a tenant or lodger, and in either case the property may be laid in the owner or person letting to hire (*k*).

Larceny of  
articles in  
which no  
person has  
any deter-  
minate  
property.

**1294** Articles in which by law no person has any determinate property are not the subject of larceny, either at common law or by statute. A corpse cannot be stolen (*l*), but a larceny may be committed in respect of the shroud (*m*) or of the coffin (*n*). The taking of treasure trove does not amount to larceny (*o*). A wreck, waif or stray, before it has been seized by the person entitled to it, is not the subject of larceny at common law (*p*). But by statute (*q*) anyone is guilty of a felony who plunders or steals any part of such a ship or wreck or any goods or articles belonging thereto.

fixture or a chattel belonging to the landlord and let to be used with the premises (*R v Meers* (1689), 1 Show 51), unless he had procured his tenancy with a fraudulent intention to steal (*R v Munday* (1799), 2 Leach, 850, 2 East, P O 594).

(*h*) Larceny Act, 1861 (24 & 25 Vict c 96), s 74

(*l*) As to offences in connection with dead bodies, see p 552, *ante*, and title BURIAL AND CREMATION, Vol. III, p 401

(*m*) *Haynes's Case* (1614), 12 Co Rep 113

(*n*) 2 East, P O 652. The property in these articles must be laid in the legal personal representatives of the deceased, or, if their names cannot be ascertained, they may be alleged to be the property of a person unknown (*ibid*, see, however, *R v Garluk* (1813), 1 Cox, C O 52), if there are no legal personal representatives of the deceased, the property may, it seems, be laid in the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice (see Court of Probate Act, 1858 (21 & 22 Vict c 95), s 19, Judicature Act 1873 (36 & 37 Vict c 66) ss 16, 34).

(*o*) As to concealment of treasure trove, see p 521, *ante*

(*p*) 1 Hawk P O, c 33, s 24

(*q*) Larceny Act 1861 (24 & 25 Vict c 96), s 64. A person who finds or takes possession of wreck within the limits of the United Kingdom, or brought within those limits if found outside them (Merchant Shipping Act, 1906 (6 Edw 7, c 48), s 72), or of any cargo or other articles from the wreck which are found on shore, is bound to give notice to the receiver of wrecks of the district, and if he is not the owner to deliver up the same to him. If he does not do so, he is liable to a fine of £100, and he also forfeits all claim to salvage and is liable to pay to the owner double the value of the wreck (Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 518, 519), see *The Zeta* (1876), L R 4 A & E 460, *The Liffey* (1867), 6 Asp M L O 255. A person who refuses without reasonable cause to assist a receiver of wreck in the preservation of shipwrecked persons, or of the vessel, cargo, or apparel, when required by him so to assist, or refuses the use of any cart or horses near at hand, is liable to a fine of £100, and the same fine is imposed upon the owner or occupier of any land who impedes persons attempting to save persons or cargo from a wreck in passing over his adjoining land (unless there is a public road equally convenient) or in depositing the cargo on such land for a reasonable time (Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 512, 513). A receiver of wreck is entitled to use force for the prevention of plundering, disorder, or obstruction, and may cause any offender to be apprehended (*ibid*, s. 514).

The punishment for this offence is penal servitude for not more than fourteen years or for not less than three years, or imprisonment with or without hard labour for not more than two years (r).

SECT. 1.  
**Taking  
Property.**

**1295** Any person is by statute (s) guilty of felony who takes into any foreign port any vessel stranded, derelict, or otherwise in distress found on or near the coasts of the United Kingdom, or on any tidal water within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or any wreck found within those limits, and then sells the same

Taking  
wreck into  
foreign port.

The punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (t).

**1296** If goods are definitely and intentionally abandoned by the owner, they become the property of the first person who appropriates them, and until they have been so appropriated they cannot be stolen (u)

Animals *feræ naturæ*, so long as they are alive and have not been reclaimed, are not at common law the subject of larceny, but when they become the property of any person, they are capable of being stolen (x)

Animals *feræ  
naturæ*

Choses in action are not the subject of larceny (y) Documents which are the evidence of such rights and the means of reducing them into possession are not the subject of larceny at common law (z) But such documents, if they constitute valuable securities, are by statute the subject of larceny

Choses in  
action

Everyone who steals, or for any fraudulent purpose destroys, cancels, or obliterates the whole or any part of any valuable security other than a document of title to lands (a) is by statute guilty of felony of the same nature and in the same degree and punishable

Larceny of  
valuable  
security

(r) Larceny Act, 1861 (24 & 25 Vict c 96), s 64, Penal Servitude Act, 1891, (54 & 55 Vict c 69), s 1

(s) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 505.

(t) *Ibid*

(u) See *R v Edwards* (1877), 13 Cox, C C 384, C C R, where, diseased pigs having been buried by the owner's orders, and the prisoners having dug up and taken the carcasses away, the jury convicted them of larceny, and the court affirmed the conviction

(x) As to how property may be acquired in animals *feræ naturæ*, see title ANIMALS, Vol I, pp 365 *et seq* See also the provisions of the Larceny Act, 1861 (24 & 25 Vict c 96), s 21, with reference to stealing domestic animals and birds, *ibid*, p 368, and as to the larceny of wild animals which have been killed or reclaimed, *ibid*, p 370 Fish in a tank or net or any inclosed place where the owner could take them at his will were the subject of larceny at common law (2 East, P C 610), the taking of fish in water running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of such water or having a right of fishery therein is a statutory misdemeanour punishable on summary conviction (Larceny Act, 1861 (24 & 25 Vict c 96), s 24) As to stealing pheasants' eggs, see *R v Stride*, [1908] 1 K B 617, C C R

(y) By a chose in action is meant a mere abstract or incorporeal right to a thing; see title CHOSE IN ACTION, Vol. IV, p 360

(z) This was said to be on the ground that such documents are of no intrinsic value and do not import any property in possession of the person from whom they are taken (1 Hawk P O, c 33, s 22, 2 East, P O. 697)

(a) As to which see p 637, *ante*

**SECT 1**  
**Taking**  
**Property.**

in the same manner as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented by, mentioned in, or referred to in the security (*b*)

**Definition of**  
**"valuable**  
**security."**

The term "valuable security" includes any order, Exchequer acquittance, or other security entitling to or evidencing the title of any person to any share or interest in any public stock or fund of the United Kingdom or of any foreign State, or in any fund of any body corporate, company or society within the kingdom or abroad, or to any deposit in any bank, and also includes any debenture deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of money, either English or foreign, and any document of title to lands or goods (*c*).

**Definition of**  
**"document**  
**of title to**  
**goods."**

The term "document of title to goods" includes any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or delivery, the possessor of such document to transfer or receive any goods therein mentioned or referred to (*d*)

**Larceny of**  
**will etc.**

**1297.** Everyone is by statute (*e*) guilty of felony who, either during the life of a testator or after his death, steals, or for any fraudulent purpose destroys, cancels, obliterates (*f*) or conceals the whole or any part of any will or codicil or other testamentary instrument

(*b*) Larceny Act 1861 (24 & 25 Vict c 96) s 27

(*c*) *Ibid*, s 1 The following have been held to be documents of the kind mentioned in the above definition of a "valuable security" —Transfer of shares (*R v Smith* (1898) 62 J P 231), bills accepted but not signed by the drawer, the prisoner himself being intended to be the drawer (*R v Bowerman*, [1891] 1 Q B 112, C C R, compare *R v Hart* (1833), 6 C & P 106), scrip certificates of a foreign railway company (*R v Smith* (1855), Deans C O 561), post office orders (*R v Gilchrist* (1841), 2 Mood C C 233, C C R), postal notes or orders (see Post Office Act, 1908 (8 Edw 7, c 48), s 59 (1)), a pawnbroker's ticket, as being a warrant for the delivery of goods (*R v Morrison* (1839), Bell, C C 158), any agreement to pay money, if founded on a valuable consideration appearing on the face of it (*R v John* (1875), 13 Cox, C C 100) The following have been held not to be such documents. —Re-issuable notes, after they have been paid and before they have been re-issued (*R v Clark* (1810), Russ & Ry 181, see, however, *R v Ranson* (1812), Russ. & Ry 232, an unstamped cheque (*R v Yates* (1827), 1 Mood C. C. 170, *R v Pooley* (1800), Russ & Ry 12), but in such cases as these the document may be described in the indictment as a piece of paper, see *R v Perry* (1845), 1 Den. 69; *R v Pye* (1829), 1 Mood C C 218), see further, as to what amounts to a warrant or order for the payment of money under the Forgery Act, 1861 (24 & 25 Vict. c 98), p 719, *post* As to larceny of documents of title to lands, see p 637, *ante*

(*d*) Larceny Act, 1861 (24 & 25 Vict c 96), s 1.

(*e*) *Ibid*, s 29 In an indictment for this offence it is not necessary to allege that the will etc. is the property of any person (*ibid*) As to deeds etc. relating to real property, see p 637, *ante*

(*f*) As to the forging of wills, see Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 21, p. 734, *post*

SECT. 1.  
Taking  
Property.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (g).

No person may be convicted either of this offence, or of stealing or for any fraudulent purpose destroying, cancelling, obliterating or concealing any document of title to lands, by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of the compulsory process of a court in any action or proceeding *bonâ fide* instituted by any party aggrieved, or in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy (h)

**1298.** Everyone is by statute (i) guilty of felony who steals, or for any fraudulent purpose takes (k) from its place of deposit for the time being, or from any person having its lawful custody, or unlawfully and maliciously cancels, obliterates, injures, or destroys the whole or any part of any record, writ, return, panel, process, affidavit, rule, order, warrant of attorney, or any original document of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court, or any original document relating to the business of any office or employment under His Majesty and being in any office appertaining to any court of justice or in any of the King's castles, palaces or houses, or in any Government or public office

Larceny of  
records.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (l).

**1299** Water in a pond or running in a channel is, it seems, not the subject of larceny. Water supplied by a water company to its consumers by pipes at a fixed price is the subject of larceny (m).

Larceny of  
water

**1300** Gas is the subject of larceny if it is fraudulently taken from the pipes of the undertakers (n). If the taking has been continuous over any period of time the whole quantity abstracted may be alleged in one indictment as having been taken on one day (o).

Larceny  
of gas.

(g) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 29. Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(h) *Ibid.* As to the meaning of "first disclosed," see *R. v. Gunnell* (1886), 16 Cox, C. C. 154, C. O. R., cited in note (b) on p. 657, *post*, and see note (b) on p. 637, *ante*.

(i) *Ibid.*, s. 30.

(k) The fraudulent purpose need not be to defraud any person by using the document, an intention to defeat the execution of process is sufficient (*R. v. Bailey* (1872), L. R. 1 C. O. R. 347).

(l) *Ibid.*, s. 30; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The indictment need not allege that the document is the property of any person.

(m) *Ferens v. O'Brien* (1883), 11 Q. B. D. 21, see title WATER SUPPLY.

(n) *R. v. White* (1853), Dears. C. C. 203. This is an indictable larceny, even though pecuniary penalties are provided by the Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 18, see title GAS.

(o) *R. v. Forth* (1869), L. R. 1 C. O. R. 172.

s. 201

**Taking  
Property.**Electricity  
Larceny of  
yarn etc.

**1301** Everyone is by statute (*p*) guilty of simple larceny who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses, any electricity.

**1302** Everyone is by statute (*q*) guilty of felony who steals the value of 10s any woollen, linen, hempen, or cotton yarn, or any article of silk, woollen, linen, cotton, alpaca, or mohair, which is placed or exposed during any process of manufacture in any building, field, or other place

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*r*)

Larceny by  
clerk or  
servant.

**1303** Any person is by statute (*s*) guilty of felony who, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals any chattel, money, or valuable security belonging to or in the possession or power of his master or employer

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years, and, if the offender is a male under the age of sixteen years, he may be sentenced to be whipped (*t*)

Larceny by  
public  
servant.

**1304** Everyone is by statute (*u*) guilty of felony who, being employed in the public service of the Crown, or being a constable or other person employed in the police, steals any chattel, money, or valuable security belonging to or in the possession or power of His Majesty, or intrusted to or received or taken into possession by him by virtue of his employment

The punishment for this offence is penal servitude for fourteen years (*v*)

It is not necessary to prove the prisoner's appointment to the office, it is sufficient to show that he has acted in it (*w*)

Stealing from  
Post Office

**1305** Everyone is by statute (*i*) guilty of felony who (1) steals a mail bag, or (2) steals from a mail bag or from a post office or

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(*p*) Electric Lighting Act, 1882 (45 & 46 Vict c 56), s 23, see title ELECTRIC LIGHTING

(*q*) Larceny Act, 1861 (24 & 25 Vict c 96), s 62 The state or process of manufacture is not complete until the articles are in a marketable condition (*R v Woodhead* (1836), 1 Mood & R 544)

(*r*) Larceny Act, 1861 (24 & 25 Vict c 96), s 62, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*s*) Larceny Act, 1861 (24 & 25 Vict c 96), s 67

(*t*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 See as to collusive sale by servant of his master's property, *R v Hornby* (1844), 1 Car & Kir. 305; *R v Tideswell*, [1905] 2 K B 273, C C R As to a gift by a servant of his master's property see *R v White* (1840), 9 C & P 344, ERSKINE, J. As to larcenies and embezzlements by servants, see p 649, *post*

(*u*) *Ibid*, s 69

(*v*) *Ibid*.

(*w*) *R v Borrett* (1833), 6 C & P 124 An under bailiff appointed by the high bailiff of a county court is not a public servant within the meaning of this section, but must be indicted as the servant of the high bailiff (*R v Parsons* (1838), 16 Cox, C C 498)

(*x*) Post Office Act, 1903 (6 Edw 7, c 48), s 50.



**SECT. 1.**  
**Taking**  
**Property.**

from an officer of the Post Office, or from a mail, any postal packet in course of transmission by post, or (3) steals any chattel or money or valuable security out of a postal packet in course of transmission by post, or (4) stops a mail with intent to rob or search the mail.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (y)

Everyone is by statute (z) guilty of felony who unlawfully takes away or opens a mail bag sent by any vessel employed by or under the Post Office for the transmission of postal packets by contract or unlawfully takes a postal packet in course of transmission by post out of a mail bag so sent

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (a)

Everyone is by statute (b) guilty of felony who, being an officer of the Post Office, steals or embezzles, secretes or destroys, a postal packet in course of transmission by post

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years, if the postal packet stolen contains any chattel, or money, or valuable security, the offender is liable to be sentenced to penal servitude for life (c).

(iv) *Indictment and Evidence*

**1306** An indictment for larceny must allege that the defendant feloniously did "steal, take, and carry away" the particular thing (d) alleged to have been stolen, and that such thing was the property of some named or unnamed person

(y) Post Office Act, 1908 (8 Edw 7, c 48), s 50, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(z) Post Office Act, 1908 (9 Edw c 7, c 48), s. 51

(a) *Ibid*, Penal Servitude Act, 1891, *supra*

(b) Post Office Act, 1908, *supra*, s 55

(c) *Ibid*, Penal Servitude Act, 1891, *supra*

(d) *R v Jones* (1838), 5 C & P 286. But see *R v Tideswell*, [1906] 2 K B 273, C C R. A mistake in the description of the owner of property may be amended, but, if it is not amended, or if the averment of ownership is omitted altogether, the indictment is bad, see *R v Ward* (1857), 7 Cox, C C 421, C C R. (Ir), *R v Murray*, [1906] 2 K B 355, C C R. If the owner of the property is unknown, the indictment should describe the property as belonging to a person to the jurors unknown. If goods formerly belonging to a deceased person are stolen after his death they must be described as the property of the executor of the deceased, if he left a will, or if he died intestate, and no letters of administration have been granted, as the property of the President of the Probate, Divorce and Admiralty Division of the High Court of Justice (Court of Probate Act, 1858 (21 & 22 Vict c 95), s 19, and see Supreme Court of Judicature Act, 1873 (36 & 37 Vict c 68), ss 16, 34), or, if letters of administration have been granted, of the administrator (see *Tharpe v Stallwood* (1843), 5 Man. & G 760, Archbold, Criminal Pleading, 23rd ed., 58). If the goods stolen were bailed at the time of the theft, and a third person steals them, the property may be laid either in the bailor or the bailee (*R v Todd* (1711), 1 Leach, 357, n.; *R v Packer* (1714), 1 Leach, 357, n., *R v Statham* (1773), cited at 1 Leach, 357, *R v Taylor* (1785), 1 Leach, 356, *R v Woodward* (1796), 2 East, P. C 653, *R v Deakin* (1800), 2 East, P. C 653; *R. v. Remnant* (1807), Russ. & Ry. 136, *R. v. Bird* (1839), 9 C & P. 44; *R. v.*

**NOTE 1**  
**Taking**  
**Property**

*Rowe* (1859), *Ball*, C C 93) Anyone who has possession, actual or constructive, of the chattels may be alleged as the owner (*R v Rowe*, *supra*, *R v Wymer* (1830), 4 O & P 391, *R v Casn* (1841), Car & M 369; refer also to *R v Stride*, [1908] 1 K B 617) A bailee who has parted by mistake with the possession of a chattel is still the owner, and may be so described (*R v Vincent* (1852), 2 Den 464) Goods cannot be laid as in the ownership of a servant who has the bare charge only of them (*R v Hutchinson* (1820), Russ & Ry 412, *R v Green* (1856), Dears & B 113); but see *R v Rudick* (1838), 8 O & P 237) If a servant or other person has the possession of the goods, as when they are intrusted to his custody and disposal, he may be described as the owner (*R v Deakin* (1800), 2 Leach, 862, *R v Burgess* (1863), Le & Ca 299) If a bailor is indicted for stealing his own goods from his bailee, the ownership in the goods must then be laid in the bailee (*R v Wilkinson* (1821), Russ & Ry 470) Goods let with furnished lodgings should be described as the property of the lodger (*R v Belstrad* (1820), Russ & Ry 411, *R v Brunswick* (1824), 1 Mood C C 26), except when they are stolen by the lodger, in which case they should be described as the property of the owner or of the person letting them (Larceny Act, 1861 (24 & 25 Vict c 96), s 74 *R v Healey* (1824), 1 Mood C C 1, *R v Hurrell* (1823), Ry & M 296) Goods seized by the sheriff under a writ of *fiat facias* may, until they are sold, be described as the property of the execution debtor (*R v Eastall* (1822), 2 Russell on Crimes, 6th ed., 264, 320), but they may also, it seems, be described as the goods of the sheriff (see *R v Knight* (1908), 1 Cr App Rep 186) Clothes and other necessities supplied by a parent to a child under age may be described either as the property of the parent or of the child, but are best described as the property of the child (*Anon* (1701), 2 East, P C 654, *R v Foragate* (1787), 1 Leach, 463, *R v Hughes* (1842), Car & M 593) Clothes and other articles worn by a married woman and other goods in the possession of a married woman, if they are not her separate property, should be described as belonging to her husband (1 Russell on Crimes, 6th ed., 257), the separate property of a married woman should be described as belonging to her and not to her husband (*R v Murray*, [1906] 2 K B 385, C C R) If the goods of one person are stolen by a thief and are afterwards stolen by another thief, they may be described as the property of the rightful owner, unless they have been sold in market overt (see p 686, *post*, 2 East, P C 654, *R v Wilkins* (1789), 1 Leach, 520, at p 522, and Pollock and Wright, Possession in the Common Law, 152) It has been said that such goods may be also described as the property of the first thief (1 Hale P C 307) If a person receives goods on account of someone else and steals them, the goods should be described as the property of the person on whose account they are received (*R v Rudick* (1838), 8 C & P 237), if the thief receives them on account of himself and some other person, the goods should be described as the property of the other person (*R v Barnes* (1866), L R 1 O C R 45), and see Larceny Act, 1861 (24 & 25 Vict c 96), ss 80, 81, Larceny Act, 1868 (31 & 32 Vict c 116), s 1, Larceny Act, 1901 (1 Edw 7, c 10), *R v Robson* (1885), 16 Q. B. D. 137, C C R) In indictments for stealing or embezzling property vested in the trustee of a bankrupt by virtue of his appointment the property may be laid in "the trustee of the property of —, a bankrupt," without inserting the name of the trustee But in indictments against a bankrupt under the Debtors Act, 1869 (32 & 33 Vict c 62), Part II., s 11, for concealing etc his property, the property must be described as the property of the bankrupt (see Archbold, Criminal Pleading, 23rd ed., 1140) If property belongs to a corporation aggregate, it must be described as belonging to the corporation by its corporate name (*R v Patrick* (1783), 1 Leach, 253, see 10 Co Rep 29 b Oro Elus 351, Bac. Abr Corporations, C, 3, *R v Frankland* (1863), Le & Ca 276) If the property belongs to an incorporated company which is in liquidation, but the liquidator has not taken possession of the property or dealt with it as his, the property should be laid in the company (*R v Bell* (1877), 13 Cox, C C 623, C C R) If property belongs to, or is in the possession of more than one person, whether partners in trade, joint tenants, parceners or tenants in common, it may be described as belonging to such persons or to one of such persons and another or others, as the case may be (Criminal Law Act, 1828 (7 Geo 4, c. 64), s 14), see *R v Boulton* (1833), 5 C. & P 537, *R v Gaby* (1810), Russ. & Ry. 178; *R v Scott* (1801), Russ. & Ry. 13. If a joint owner,

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tenant in common, or partner is indicted for an offence in respect of the property of which he is joint owner etc., and it is necessary to aver to whom the property belongs, the property should be described as belonging to one or more of the other joint owners etc. other than the defendant and to another or others (see *R. v. Webster* (1861), Le. & Ca. 77). The property in bells and other goods belonging to a church may be laid in the parishioners, or, it seems, in the churchwardens (1 Hale, P. O. 512). In *R. v. Wortley* (1846), 1 Den. 162, it was held that the property in a collecting box was rightly laid in the vicar and churchwardens. The property in the church may be laid in the incumbent (see 2 East, P. O. 651). As to lead stolen from a vault in a churchyard, see *R. v. Garlick* (1843), 1 Cox, C. O. 52. The property in the goods in a dissenting chapel vested in trustees should be laid in the trustees or in one or more of them (*R. v. Boulton* (1833), 5 C. & P. 537). In indictments for stealing or embezzling property belonging to banking co-partnerships formed under the Country Bankers Act, 1826 (7 Geo. 4, c. 46), or for any fraud, forgery, or offence committed against or with intent to defraud such co-partnerships, the property may be described as belonging to one of the public officers of such co-partnerships, and the name of any one of such public officers may be used in all indictments instead of the names of the persons forming the co-partnership (Country Bankers Act, 1826 (7 Geo. 4, c. 46), s. 9). The property may also in such a case be laid in one of the members of the co-partnership and others under the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 14 (*R. v. Pritchard* (1861), Le. & Ca. 34, see 1 Russell on Crimes, 6th ed. 30). See also, as to joint stock banking companies, Joint Stock Companies Act, 1810 (3 & 4 Vict. c. 111). The property in money, goods, chattels, securities for money, and all other effects belonging to a friendly society, or to any branch of such society, may be laid in the trustees for the time being in their proper names as trustees for the society or branch, without any further description (Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 51, *R. v. Marks* (1866), 10 Cox, C. O. 367). The property in money etc. belonging to a registered trade union may be laid in the person or persons for the time being holding the office of trustee or trustees, in his or their proper name or names, as trustees of such trade union, without any further description (Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 8, Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), s. 3), so as to the property of trustee savings banks (Trustee Savings Banks Act, 1863 (26 & 27 Vict. c. 87), s. 10, see *R. v. Bull* (1845), 1 Cox, C. O. 137) and loan societies (Loan Societies Act, 1840 (3 & Vict. c. 110), s. 8).

County property, if vested in the county council of the administrative county in which the property is, should be laid in "the county council of ——" (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (iv), and see *R. v. Hunting* (1908), 1 Cr. App. Rep. 177). Other county property not so vested may be laid in the inhabitants of the county (Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 15). Property in prisons and the things therein vested in the Prison Commissioners should be laid in the Prison Commissioners (Prison Act, 1877 (40 & 41 Vict. c. 21), s. 48). Property of the guardians of the poor of every union formed under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), and of every parish placed under the control of a board of guardians by virtue of that Act, should be laid in the "guardians of the poor of the ——" union (or "of the parish of ——" in the county of ——" (Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69), s. 7, Poor Law Amendment Act, 1842 (5 & 6 Vict. c. 57), s. 16). Property procured or provided for the use of the poor of any parish, township, or hamlet, if such property is not vested in the guardians of the poor of a union, may be laid in "the overseers for the time being" of the parish, township, or hamlet, without stating or specifying the names of any of them (Poor Relief Act, 1815 (56 Geo. 3, c. 137), s. 1, *R. v. Went* (1818), Russ. & Ry. 359, *Doe d. Norton v. Webster* (1840), 12 Ad. & El. 442). Other parish property in a rural parish, if vested in the parish council, may be laid in "the parish council of ——" or if under the control of the parish meeting, may be laid in "the chairman of the parish meeting and the overseers of the parish of ——" (Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 5, 52 (5)). In an indictment against a collector or overseer of a parish for embezzling money collected by him from the ratepayers the property in the money should be laid in the inhabitants of the parish, and the names of the inhabitants need not be specified (Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 15, *R. v. Smallman*,

**SECT. 1.**  
**Taking**  
**Property.**  
**Counts.**

**1307** Several counts may be inserted in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within six months from the first to the last of such acts, and the prosecution may proceed at the trial upon all of them (e).

If it appears at the trial that the property, alleged in the indictment to have been stolen at one time, was taken at different times, the prosecution will not be required to elect upon which taking they will proceed, unless it appears that there were more than three takings, or that more than six months elapsed between the first and the last of them, otherwise the prosecution must elect upon which three charges occurring within six months they will proceed (f)

[1897] 1 Q. B. 4, C. O. R.) In an indictment for larceny of meat bought for the use of inmates of a county asylum, the property should be laid in the county council, not in the visiting committee (*R v Hunting* (1908), 73 J. P. 12, C. C. A.)

The property in materials, tools or implements, provided for making, altering, or repairing any highway may be laid in the local authority in whom the highway is vested—i. e., as to main roads and county bridges outside London, the county council in whom the highway is vested (*Local Government Act*, 1888 (51 & 52 Vict. c. 41), s. 11 (6)), as to main roads and other highways in London outside the City, the metropolitan borough council (*London Government Act*, 1899) (62 & 63 Vict. c. 14), s. 6), as to highways in the City of London, the City Corporation (*City of London Sewers Act*, 1848 (11 & 12 Vict. c. 41), City of London Sewers Act, 1897 (60 & 61 Vict. c. 68), s. 5), as to highways outside London in boroughs, the town council, in urban districts, the urban district council (*Public Health Act*, 1875 (38 & 39 Vict. c. 55), ss. 141, 149), in rural districts the rural district council (*Highway Act*, 1862 (25 & 26 Vict. c. 61), s. 11, *Local Government Act*, 1894 (56 & 57 Vict. c. 73), s. 25). As to bridge approaches and embankments vested in the London County Council, see *London Government Act*, 1899 (62 & 63 Vict. c. 14), s. 6). The property in any sewer or other matter within or under the view, cognisance, or management of commissioners of sewers may be laid in the commissioners of sewers within or under whose view etc. the property may be, and the names of the commissioners need not be specified (*Criminal Law Act*, 1826 (7 Geo. 4, c. 64), s. 18).

In indictments for stealing etc. clothes, linen, or other goods belonging to the Chelsea Hospital, or the commissioners of the hospital, the property may be laid in "the lords and others, commissioners of the royal hospital for soldiers at Chelsea in the county of Middlesex" (*Chelsea and Kilmainham Hospitals Act*, 1826 (7 Geo. 4, c. 16), s. 35).

In indictments for stealing post letters etc. and for offences in respect of telegraphic messages sent by or intrusted to the Postmaster-General, the property in such letters and messages may be laid in "His Majesty's Postmaster-General" (*Post Office Act*, 1908 (8 Edw. 7 c. 48), s. 73).

The property in moneys, chattels or valuable securities stolen or embezzled by persons in the public service, or by constables or other persons employed in the police of any county, city, or borough, district, or place, may be laid in the King (*Larceny Act*, 1861 (24 & 25 Vict. c. 96), ss. 69, 70) and see as to officers in the customs, *Customs Consolidation Act*, 1876 (39 & 40 Vict. c. 46), s. 29.

(e) *Larceny Act*, 1861 (24 & 25 Vict. c. 96), s. 5. It is usual, and apparently necessary, that the second and third counts of the indictment should state expressly that the offences charged in them were committed within six months, although the dates may be stated, otherwise the prosecution will be confined to one charge (*R v Lonsdale* (1864), 4 F. & F. 56, 59), see, however, *R v Nicholls* (1904), 68 J. P. 452, C. C. R., in which a large number of different takings were alleged in one count, no date being stated.

(f) *Ibid.*, s. 6. It is not necessary to allege any date in the indictment (*Criminal Procedure Act*, 1851 (14 & 15 Vict. c. 100), s. 24), nor will the

**SECT. 1.**  
**Taking**  
**Property.**  
**Evidence.**

**1308.** On an indictment for larceny the prosecution must prove that the goods mentioned in the indictment were the property of the person who is alleged in the indictment to be the owner, and that defendant took the goods away and that he took them away with a dishonest intent. It must also appear that the goods were such as may be the subject of larceny either at common law or by statute, and that they were taken from the owner against his will.

Evidence that the defendant was seen to take the goods in question is not essential, it is sufficient if he was found in possession of stolen property shortly after the theft, in such a case the jury are generally warranted in concluding that he stole the goods or came by them dishonestly, unless he gives a satisfactory explanation to show how he came by the goods. The weight of such a presumption depends upon the nature of the thing stolen, and the length of time which has elapsed since the stealing (*g*).

So also if upon the trial of a person for larceny it is proved that he took the property in such manner as to amount in law to embezzlement, the jury may return as their verdict that he is not guilty of larceny but is guilty of embezzlement, and he is thereupon to be punished as if he had been indicted for the latter offence.

No person tried for larceny or embezzlement is liable to be afterwards prosecuted for larceny or embezzlement on the same facts (*h*).

indictment be quashed, although it appears by the evidence that there were more than three separate takings, but upon such evidence being given the prosecution may be required to elect upon which three they will proceed (*R v. Nicholls* (1904), 68 J 352, C O R). If there has been a continuous taking the court will not compel the prosecution to elect (*R v. Bleadale* (1818), 2 Car. & Kir 765, *R v. Kirth* (1869) 11 Cox, C O 234, 238, 240, C O R, *R v. Hennood* (1870), 11 Cox, C O 526, C O R).

An indictment for larceny may be in the following form—"Worcestershire to wit The jurors [for our lord the King] upon their oath present that John Jones on the first day of February in the year of our Lord, one thousand nine hundred and nine, [in the parish of — in the said county] one silver watch of the goods and chattels of James Smith feloniously did steal, take and carry away against the peace, etc."

(*g*) See *Anon* (1826), 2 C & P 459, *R v. Adams* (1829) 3 C & P 600, *R v. Cockin* (1836), 2 Lewin 215, *R v. Hall* (1845), 1 Cox, C O 251, *R v. Hewlett* (1843), 3 Russell on Crim., 355—6, n, *R v. Cooper* (1852), 3 Car & Kir 318, *R v. Harris* (1860), 5 Cox, C O 331, *R v. Knight* (1864), Le & Ca 378, *R v. Evans* (1847), 2 Cox, C O 270, *R v. Lungmead* (1864), Le & Ca 427, *R v. Partridge* (1836), 7 C & P 551, *R v. Smith* (1862), 3 F & F 123, *R v. Hornby* (1844), 1 Car & Kir 305, *R v. Tidswell*, [1905] 2 K B 273, C O R, and p 681, *post*. As to a dishonest gift by the servant of his master's property, see *R v. White* (1840), 9 C & P 344, ERSKINE, J.

(*h*) Larceny Act, 1861 (24 & 25 Vict c 96), s 72. In *R v. Gorbitt* (1857), Dears & B 166, it was held upon a similar section in the repealed Criminal Procedure Act, 1851, *supra*, s 13, that although a prisoner indicted for stealing may be convicted of embezzlement, yet he cannot be convicted of stealing if there is only evidence of embezzlement, and that in such a case a conviction for larceny or a general verdict of guilty upon an indictment for larceny must be quashed. This decision makes it still desirable to consider the distinguishing features between larceny by a servant and embezzlement, notwithstanding the beneficial provisions of s 72 and the fact that the punishment for the two offences is the same. But having regard to the Criminal Appeal Act, 1907 (7 Edw 7, c 23), s 5 (2), *R v. Gorbitt* would probably not now be followed in the Court of Criminal Appeal, as that court would in such a case have the power to substitute a verdict of embezzlement for one of larceny.

## SECT 1.

**Taking  
Property.****Embezzle-  
ment.**SUB-SECT 2—*Embezzlement.*

**1309.** A servant who steals moneys or goods after they have come to the possession of his master, although they may be in the servant's custody, is guilty of larceny; but a servant who fraudulently intercepts moneys or goods before they come into his master's legal possession and converts them to his own use, commits the offence of embezzlement<sup>(1)</sup>

**1310.** By statute (*h*) anyone who, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, fraudulently embezzles any chattel, money, or valuable security (*l*) delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, is deemed to have feloniously stolen the same from him, although such property was not received into the possession of the master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under the age of sixteen years, he may be sentenced to a whipping (*m*)

**Verdict.**

**1311** If upon the trial of a person indicted for embezzlement it is proved that he took the property in such manner as to amount in law to larceny, he is not entitled to be acquitted, but the jury may return as their verdict that he is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, or as a person employed in the public service or in the police, as the case may be, and he is then punishable as if he had been convicted on an indictment for such larceny (*n*)

**Charging  
different  
embezzle-  
ments in one  
indictment**

**1312** The prosecution may charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed against the same master or employer within six months (*o*)

(1) There was some doubt whether in certain cases a taking by a servant from his master was punishable as larceny at common law (see stat (1529) 21 Hen 8, c. 7), embezzlement was not so punishable, the original taking being lawful, and the goods never having come into the actual possession of the master (1 Hale, P. C. 668, *R v Bazeley* (1799), 2 Leach, 835)

(h) Larceny Act, 1861 (24 & 25 Vict. c 96), s. 68.

(l) For the definition of "valuable security," see p 642, *ante*

(m) Larceny Act, 1861 (24 & 25 Vict. c 96), s. 68, Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s. 1 The offence is triable at quarter sessions

(n) Larceny Act, 1861 (24 & 25 Vict. c 96), s. 72, *R v. Kudge* (1874), 13 Cox, C. O 17, C O R.

(o) Larceny Act, 1861 (24 & 25 Vict. c 96), s. 71, and see the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 18 The three offences must be charged in different counts, and the date of each offence is the date of the embezzlement, which may be subsequent to the date of receipt; the indictment must allege in terms that the three sums were embezzled within six months (*R v. Purchase* (1842), Car & M 617, PARRISON, J; *R v Noake* (1848), 3 Car. & Kir., 620, CRESSWELL, J.). Upon an indictment for embezzling money,

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Property.

If more than three acts of embezzlement are charged in one indictment, or if sums are alleged to have been received on one day and the evidence shows that they were received on several days the prosecution will be required to elect on which charge they will proceed (a). But where it is the prisoner's duty to account at fixed times for his aggregate receipts to date, each failure to account constitutes one act of embezzlement, and three of such embezzlements, if within six months, may be charged in the indictment, and the aggregate receipts for which he should have accounted at each of such periods may be proved (b).

If the offence relates to any money or any valuable security, it is sufficient to allege the embezzlement to be of money or a valuable security without specifying any particular coin or valuable security.

**1313** The accused may be convicted, although the coin or valuable security was delivered to him in order that some part of the value thereof should be returned to the person delivering it or to some other person and such part has been returned accordingly (c). There must be evidence that specific sums have been received and have been embezzled and not accounted for. It is not sufficient to show a general deficiency without proving the specific sums, or some of them, constituting such deficiency (d).

To rebut a defence that errors in a clerk's account were accidental or innocent, evidence may be given of other similar errors by the prisoner in his own favour (e).

**1314** A clerk or servant is a person under the control and bound to obey the orders of his master. He may be a clerk or servant without being bound to devote his whole time to this service, but if he is bound to devote his whole time to it, this is strong evidence of his being under control (f).

What is a  
clerk or  
servant.

A person who is employed to get orders and receive money, but who is at liberty to get the orders and receive the money when and where he thinks proper, is not a clerk or a servant (g).

If the evidence shows that the prisoner received a cheque, it must also be proved that he cashed it or attempted to do so (*R v Kenna* (1868), L R 1 C O R 113), upon an indictment charging the embezzlement of money the prisoner cannot be convicted of embezzling goods (*R v Chaille* (1903), 69 J P 150, C O R).

(a) *R v Williams* (1834), 6 C & P 626, and see p 648, ante.

(b) *R v Balls* (1871), L R 1 C O R 328 (where thirty one separate sums which the prisoner had received and not accounted for were proved, and the conviction was affirmed).

(c) Larceny Act, 1861 (24 & 25 Vict c 96), s 71.

(d) *R v Jones* (1838), 8 C & P 288, ALDERSON, B., *R v Chapman* (1843), 1 Car & Kir 119, WILLIAMS, J., *R v Wright* (1858), Dears & B 431, *R v Wolstenholme* (1869), 11 Cox, C C 313, BRETT, J., see, however, *R v Lambert* (1847), 2 Cox, C C 309, ERLE, J., *R v Grove* (1835), 7 C & P 635, 1 Mood C C 447 (where a contrary conclusion seems to have been arrived at by eight judges against seven), is not now considered to be law. See the observations of ALDERSON, B., on this case in *R v Jones*, supra, also *R v Moah* (1856), 7 Cox, C C 60, 68.

(e) *R v Richardson* (1860), 2 F & F 343, *R v Proud* (1861), 1 K & Ca. 97, *R v Stephens* (1888), 18 Cox, C C 387, C C R.

(f) *R v Negus* (1873), L R 2 C C R 34, 37.

(g) *R v Negus*, supra, *R v Lowers* (1866), L R 1 C O R 41, 45, *R v Mayle* (1868), 11 Cox, C C 150, *R v Marshall* (1870), 11 Cox, 490.



## SECT 1

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Property

What  
constitutes  
embezzle-  
ment.

Whether the accused was acting as a clerk or servant is a question of fact for the jury (*h*)

**1315** It is not a criminal offence to embezzle the moneys of an unlawful and criminal society (*i*) But the members of a society

O C R, *R v Hall* (1875), 13 Cox, O C 49, O C R, *R v Walker* (1858), 8 Cox, O C 1, O C R, *R v May* (1861), *Le & Ca* 13 In the following cases the accused were held to be clerks or servants or acting as such — *R v Stuart*, [1894] 1 Q B 310, O C R (director of company employed to collect the company's moneys), *R v Mellish* (1805), Russ & Ry 80 (an apprentice), *R v Squire* (1818), Russ & Ry 319 (accountant and treasurer to overseers), *R v Hartley* (1807), Russ & Ry 139 (captain of barge authorised to sell coal), *R v Tate* (1861), *Le & Ca* 29, O C R, *R v Bailey* (1871), 12 Cox, O C 66, O C R (commercial traveller paid by commission and allowed to obtain orders for others), *R v Gibson* (1861) 8 Cox, O C 436 (solicitor employed at a salary to collect rents and manage property), *R v Thomas* (1853), 6 Cox, O C 403 (a collier allowed to sell coal but not obliged to do so), *R v Spencer* (1815), Russ & Ry 299, *R v Winnall* (1861), 5 Cox, O C 326, *R v Hughes* (1832), 1 Mood O C 370 (a person only occasionally employed), *R v Batty* (1842), 2 Mood O C 257, *R v Turner* (1870), 11 Cox, O C 551, *R v Carr* (1811), Russ & Ry 198 (a person employed also by others), but see the observations of PARKE, B, in *R v Goodbody* (1838), 8 C & P 665, *R v Foulkes* (1875), L R 2 C O R 150 (son assisting father who was employed by prosecutors), *R v Wortley* (1851), 5 Cox, O C 382, O C R, *R v McDonald* (1861), *Le & Ca* 85 (a person partly paid by a share of profits), *R v Proud* (1861), *Le & Ca* 97, *R v Hall* (1836), 1 Mood O C 474, *R v Miller* (1842), 2 Mood O C 249 (member of friendly society employed to receive weekly payments the property of the society being vested in trustees), but see *R v Loose* (1860), 29 L J (M C) 132, O C R, *R v Marsh* (1862), 3 F & F 527, *R v Bren* (1863), *Le & Ca* 346, *R v Tyree* (1869) L R 1 C O R 177, *R v Flanagan* (1867), 10 Cox, O C 561 (a broker exclusively employed at a salary to distain), *R v Solomons* (1909), 25 T L R 747, O C A (the driver of a taxicab) The following were held not to be clerks or servants or employed in that capacity *R v Barnes* (1859), 8 Cox, O C 129 (a debtor employed by trustee under deed of assignment), *R v Hoare* (1859), 1 F & F 617 (a person employed or authorised to receive rents gratuitously), *R v Goodbody* (1838), 8 C & P 665 (cattle drover permitted to sell), *R v Burton* (1829) 1 Mood O C 237 (a person employed to collect an offertory), *R v Freeman* (1833), 5 C & P 534, *R v Nettleton* (1850) 1 Mood O C 259 (a person having an isolated authority to receive money), but see *R v Hughes* (1832), *ibid* 370, *R v Tyree* (1869), L R 1 C O R 177 (the treasurer of a friendly society), *R v Gibbs* (1855), 6 Cox, O C 455, O C R (a bailee)

An assistant overseer in a rural parish, though appointed by the parish council, is the clerk or servant of the inhabitants of the parish, and should be so described in the indictment (Poor Law Amendment Act, 1849 (12 & 13 Vict. c 103) s 15, *R v Watts* (1837), 7 Ad & El 461, 469, see and compare *R v Sampson* (1846), 1 Cox, O C 355, *R v Carpenter* (1866), L R 1 C O R 29, *R v Smallman*, [1897] 1 Q B 4, O C R.), and it is submitted that where in a municipal borough or urban district the appointment of assistant overseers either has or has not been conferred on the borough or district council under the Local Government Act, 1894 (56 & 57 Vict c 72), s 33 (1), such an officer should still be described as the servant of the inhabitants notwithstanding *R v Coley* (1887), 16 Cox, O C 226, O C R, which case, however, was not cited in *R v Smallman*, *supra*

If the agreement of service is in writing, and is in existence, the writing must be put in evidence (*Re Clapton* (1848), 3 Cox, O C 126) In most cases, such as those in which it was held that the prisoner could not be convicted of embezzlement on the ground that he was not acting as clerk or servant to the prosecutor, he may now be indicted under the Larceny Act, 1901 (1 Edw 7, c 10), p 660, *post*, for the fraudulent conversion of the property received see e.g., *R v Lord* (1905), 69 J P 467, C O R As to officers of a local marine board, see *Merchant Shipping Act*, 1894 (57 & 58 Vict. c 607), s 248

(*h*) *R v Chater* (1861), 9 Cox, O C 1.

(*i*) *R v Hunt* (1838), 8 O & P 642



which does not exist for a criminal purpose, but which is irregularly constituted (*k*), or one of the objects of which is in restraint of trade (*l*), may be the joint beneficial owners of property, and such property may be the subject of embezzlement.

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Taking  
Property.

To constitute embezzlement the property must have been received by the accused for, or in the name or on account of, the employer of the accused (*m*). If it has already been in the employer's possession (*n*), or, having been in the possession of any other clerk or servant on behalf of the master, is given by such clerk or servant to the prisoner to be paid or delivered to some person on account of the employer and the prisoner misappropriates it, the offence is not embezzlement (*o*).

If the property is in the possession of another clerk or servant of the employer, and is delivered by him to the prisoner to deliver to the employer, and the prisoner misappropriates it, he commits embezzlement (*p*).

The crime of embezzlement is complete when the servant fraudulently misappropriates the property, and he is not necessarily entitled to be acquitted because he has made true and correct entries in his master's accounts (*q*). But if the money received for the employer is accounted for and not denied, the fact of not paying it over without some evidence of fraudulent intent is not sufficient proof of the felony (*r*).

(*k*) *R v Tankard*, [1894] 1 Q B 548, C C R

(*l*) *R v Stainer* (1870), L R 1 C C R 230

(*m*) Larceny Act, 1861 (21 & 23 Vict c 90), s 68, *R v Beaumont* (1851), Dears C C 270, *R v Harris* (1854), Dears C C 344, *R v Thorpe* (1858), Dears & B 562, *R v Gale* (1876), 2 Q B D 141, C C R. If the receipt by the prisoner is wholly wrongful, being in his own name and on his own account, as where the prisoner earned money in his own name by a wrongful or dishonest user of his master's property, the offence is not embezzlement (*R v Cullum* (1873), L R 2 C C R 28, *R v Beau* 1877), 3 Q B D 131, C C R).

(*n*) *R v Hayward* (1841), 1 Car & Kir 518, *R v Reed* (1854), 6 Cox, C C 284, 289, C C R. In these cases the goods had been put down by the prisoner at his master's door or placed by him in the master's cart, and it was held that although the prisoner still remained in personal possession of the goods, his exclusive possession had been so far determined that the goods had come into the master's constructive possession and that the offence was larceny and not embezzlement.

(*o*) *R v Murray* (1830), 1 Mood C C 276, *R v Hawkins* (1850), 4 Cox, C C 224, C C R, *R v Wright* (1858), Dears & B 431. In such cases the offence is larceny, and the prisoner may be convicted of that offence (see p 641, ante), or he may be indicted for a misdemeanour under the Larceny Act, 1901 (1 Edw 7, c 10).

(*p*) *R v Masters* (1848), 1 Den 332

(*q*) *R v Guelder* (1860), 8 Cox, C C 372, C C R, see also *R v Foster* (1856), 7 Cox, C C 204, C C R, *R v White* (1839), 8 O & P 742, *R v Jackson* (1844), 1 Car & Kir 384, *R v Davison* (1855), 7 Cox, C C 158, 162, 163. It appears impossible to reconcile with these cases *R v Jones* (1837), 7 O & P 833, in which BOLLAND, B, is reported to have said that for a clerk to put the money in his own pocket and make no entry was not sufficient evidence of embezzlement, and *R v Creed* (1843), 1 Car & Kir 63, where ECKKINE, J., held that a clerk who had rendered a true account of money which he had received, and did not pay it over but absconded, could not be convicted of this offence, see also *R v Winnall* (1851), 5 Cox, C C 326.

(*r*) *R v Hodgson* (1828), 3 C & P 422, VAUGHAN, B

SMOT. 1

**Taking  
Property.**

If the prisoner does not deny the receipt or appropriation of the property which he is accused of embezzling, but acknowledges that he received it and alleges a right, or an excuse for detaining the property, unless it is clear that such allegation is merely a pretence, he should not be convicted of embezzlement(s).

Where  
embezzlement  
committed

**1316** The embezzlement is committed in the place where the accused person has refused to account (i), or, if there is no evidence of fraudulent embezzlement except the non-accounting, in the place where he ought to have accounted and failed to do so (a), or has accounted falsely (b), or in the place where he received and misappropriated the property in question (c)

Embezzle-  
ment by  
officer etc of  
Bank of  
England.

**1317** Any officer or servant of the Bank of England or of the Bank of Ireland is by statute (d) guilty of felony who, being intrusted with any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or with any security, money, or other effects (e) of such bank, or having any such property of any other person lodged or deposited with such bank or with him as an officer or servant thereof, secretes, embezzles, or runs away with the same or any part thereof

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (f)

Embezzle-  
ment by  
person in  
the king's  
service,  
police etc.

**1318** Whoever, being employed in the King's public service, or being a constable or other person employed in the police of any county, city or place, and intrusted by virtue of such employment with the custody, management, or control of any chattel, money, or valuable security, embezzles any chattel, money, or valuable security intrusted to or received or taken into possession

(s) See *R v Norman* (1842) Car & M 501, CRESSWELL, J

(t) *R v Murdock* (1851), 5 Cox, C C 360, C C R, *R v Taylor* (1803), 2 Leach, 974 As to place of trial, see p 280, note (r), ante

(a) *R v Davison* (1855), 7 Cox, C C 158, 162, and see *R v Rogers* (1877), 3 Q B D 28, C C R, at p 40

(b) *R v Murdock*, *supra*, *R v Rogers*, *supra*, but not in a place where he has accounted truly and in which he did not receive the money alleged to be embezzled, there being no evidence to show that, although he lived there, he had taken the money to that place (*R v Treadgold* (1878), 14 Cox, C C 220, C C R)

(c) *R v Hobson* (1803) Russ & Ry 56, *R v Rogers*, *supra*, at pp 40, 41.

(d) Larceny Act, 1861 (24 & 25 Vict c 96), s 73 Documents to which a bank clerk merely has access, but to which his duty has no relation, are not documents intrusted to him within the meaning of this section (*R v Bakewell* (1802), Russ. & Ry 33)

(e) Documents issued as Exchequer bills, but invalid as such from the want of a proper signature, are such "effects" (*R v Aslett* (1804), Russ & Ry. 67)

(f) Larceny Act, 1861 (24 & 25 Vict c 96), s 73, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1 This offence is not triable at quarter sessions.

by him by virtue of his employment, or in any manner fraudulently applies or disposes of the same to his own use or benefit, or for any purpose whatsoever except for the public service, is by statute deemed to have feloniously stolen the same from the King (*g*).

SECT. 1.  
**Taking  
Property**

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*h*).

Such person may be indicted either in the place where he is apprehended, or is in custody, or in which he has committed the offence. In the indictment the property may be laid in the King.

**SUB-SECT. 3 —Fraudulent Misappropriation by Directors, Trustees etc**

**1319** Everyone is by statute (*i*) guilty of a misdemeanour who, being a person authorised to receive money to arise from the sale of any annuities or securities purchased or transferred under the provisions of Part V of the Municipal Corporations Act, 1882 (*l*), or any dividends thereon, or any such other money as is therein mentioned, appropriates the same otherwise than is directed by that Act or by the Treasury in pursuance thereof.

Misappropriation of annuities etc

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

**1320** Any director, member, or public officer of any body corporate or public company is by statute guilty of a misdemeanour (*m*) who fraudulently (*n*) takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of its property.

Misappropriation by directors etc

The punishment for this offence is penal servitude for not more

(*g*) Larceny Act, 1861 (24 & 25 Vict c 96), s 70. As to larceny by such officers, see s 69, p 644, *ante*. For the definition of "valuable security," see p 642, *ante*. A person employed by an inspector of prisons to collect contributions due from the parents of children committed to reformatory and industrial schools is employed in the King's public service (*R v Graham* (1875), 13 Cox, C C 57, C C R). An assistant bailiff appointed by the high bailiff of a county court is not a person employed in the public service, but is the servant of the high bailiff and must be indicted as such (*R v Parsons* (1888), 16 Cox, C C 498). By the Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 29, any moneys, chattels, or valuable securities received by any officer, clerk or other person in the service of the customs, either as duties or in virtue of his office or employment or otherwise for the use and service of His Majesty or of any public department, are to be deemed to be moneys, chattels, or valuable securities for the public service, and are to be considered as such within the meaning of the Larceny Act, 1861 (24 & 25 Vict c 96), and may be alleged in an indictment to be the property of His Majesty.

(*h*) Larceny Act, 1861 (24 & 25 Vict c 96), s 70, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is, it seems, triable at quarter sessions, but see Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict c 50), s. 117, Larceny Act, 1901 (1 Edw 7, c 10).

(*k*) 45 & 46 Vict c. 50.

(*l*) *Ibid*, s 117, Larceny Act, 1901 (1 Edw 7, c 10), Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1.

(*m*) Larceny Act, 1861 (24 & 25 Vict, c 96), s 81, see also p 657, *post*.

(*n*) *Nelson v R.* [1902] A C 250, P C.

**SECT 1**  
**Taking**  
**Property.**

Misappropriation by  
director etc

than seven or less than three years, or imprisonment with or without hard labour for not more than two years (o).

**1321** Any director, public officer, or manager of any body corporate or public company is by statute guilty of a misdemeanour (p) who as such receives or possesses himself of any of its property otherwise than in payment of a just debt or demand, and who with intent to defraud omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (q)

Misappropriation by  
trustee.

**1322** Everyone is by statute (r) guilty of a misdemeanour who, being a trustee of any property (s) for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, with intent to defraud converts or appropriates the same or any part thereof to his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose, or otherwise disposes of or destroys such property or any part thereof

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (t)

No prosecution for this offence may be commenced without the sanction of the Attorney-General or, if that office be vacant, of the Solicitor-General

(o) Larceny Act, 1901 (1 Edw 7, c 10, s 1 (1), Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The punishment for this offence, and for offences against ss 77—84 of the Act of 1861, is stated in s 75 of the Larceny Act, 1861 (24 & 25 Vict c 96), that section was repealed by the Larceny Act, 1901 (1 Edw 7, c 10), s 1 of which is substituted for ss 75 and 76 of the Larceny Act, 1861, and imposes the same punishment None of the offences mentioned in ss 77—86 of the Larceny Act, 1861, or in the Larceny Act, 1901 (1 Edw 7, c 10), are triable at quarter sessions (Larceny Act, 1861 (24 & 25 Vict c 96), s 87) As to evidence see p 657, note (b), *post*

(p) Larceny Act, 1861 (24 & 25 Vict c 96), s 82

(q) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(r) *Ibid*, s 80

(s) The term "trustee" here means a trustee on some express trust created by some deed, will, or instrument in writing, and includes the heir or personal representative of any such trustee and any other person upon or to whom the duty of such trustee shall have devolved or come, and also an executor and administrator and an official manager, assignee, liquidator, or other like officer, acting under any Act relating to joint stock companies, bankruptcy or insolvency (Larceny Act, 1861 (24 & 25 Vict c 96), s 1) For a definition of "property" see *ibid*, and p 681, note (a), *post* The secretary, trustee, and manager of a savings bank has been held to be within this definition a trustee of money which he received as secretary, and the rules of such a society may be such an instrument as to create an express trust (*R v Fletcher* (1862), Le & Ca 180) A document by which a debtor undertook to hold certain goods in trust for his creditor and to pay him the proceeds thereof is an instrument creating such a trust (*R v Townshend* (1884), 15 Cox, C C 466) It is sufficient for the indictment to allege that the defendant was a trustee without alleging an express trust (*R v Piper* (1900), 65 J P 10)

(t) Larceny Act 1861 (24 & 25 Vict c 96), s 75, Penal Servitude Act, 1891 (54 & 55 Vict c. 69), s 1; and see note (o), *supra*

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Taking  
Property.

If any civil proceedings have been taken against the defendant, no person who has taken such civil proceedings may commence any prosecution for this offence without the sanction of the court or judge before whom such civil proceedings have been or shall be pending (a)

The defendant cannot be convicted of this offence by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any court in any action, suit or proceeding *bond fide* instituted by any party aggrieved (b).

**1323** Everyone is by statute (c) guilty of a misdemeanour who, being intrusted, either solely or jointly with any other person, with any power of attorney for the sale or transfer of any property (d), fraudulently sells or transfers or otherwise converts the same or any part thereof to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted

Fraudulent  
abuse of  
power of  
attorney.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not less than two years (e)

**1324** Everyone is by statute (e) guilty of a misdemeanour who, being a factor or agent intrusted either solely or jointly with any other person for the purpose of sale or otherwise with the possession of goods or of any document of title to goods (f), makes, contrary to or without the authority of his principal, for the use or benefit of himself or of any person other than his principal and in violation of good faith, any consignment, deposit, transfer, or delivery of any goods or documents of title so intrusted to him, by way of pledge, lien or security for any money or valuable security borrowed or received by such factor or agent, or accepts any advance on the

Frauds by  
factors and  
agents

(a) Larceny Act, 1861 (24 & 25 Vict c 96), s 80

(b) *Ibid*, s 85 A statement or admission made by the defendant in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy is not admissible in evidence against him in any proceeding in respect of the offence mentioned in ss 77 to 85 of the Larceny Act, 1861, or in the Larceny Act, 1901 (Bankruptcy Act, 1890 (53 & 54 Vict c 71), s 27 (2), see p 399, note (g), *ante*, but his statement of affairs is admissible (*R v Pike*, [1902] 1 K B 552, C O R) "Shall have first disclosed" means shall have first made known that which before was not known, and there is a great distinction between what is known and what is mere gossip or surmise (*R v Gunnell* (1886), 16 Cox, C C 154, 157, 158, C. C R.)

(c) Larceny Act, 1861 (24 & 25 Vict c 96), s 77

(d) For definition of "property," see *ibid*, s 1, and p 684, *post*

(e) Larceny Act, 1861 (24 & 25 Vict c 96), s 78, Larceny Act, 1901 (1 Edw. 7, c 10), ss 1, 2 As to evidence, see note (b), *supra*

(f) "Document of title to goods" includes any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possession of such document to transfer or receive any goods thereby represented or therein mentioned or referred to (Larceny Act, 1861 (24 & 25 Vict. c 96), s 1)

**SECT 1**  
**Taking**  
**Property.**

faith of any contract to consign, deposit, transfer or deliver such goods or documents of title

The punishment is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (*g*)

Every clerk or other person who knowingly and wilfully assists such factor or agent to commit this offence is guilty of a misdemeanour (*h*)

The punishment is penal servitude for not exceeding seven years (*i*)

No such factor or agent is liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title if the same are not made a security for or subject to the payment of any greater sum of money than the amount which at that time was justly due to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of the principal and accepted by the factor or agent (*k*)

**Fraudulent**  
**misappropriation of**  
**property**

**1325** Everyone is by statute (*l*) guilty of a misdemeanour who, (1) being intrusted, either solely or jointly with any other person, with any property (*m*) in order that he may retain in safe custody (*n*)

(*g*) Larceny Act, 1861 (24 & 25 Vict c 96), s 78, Larceny Act, 1901 (1 Edw 7, c 10), ss 1, 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*h*) *Ibid*, s 77

(*i*) *Ibid*, s 75

(*k*) *Ibid*, s 75. It is provided by s 79 that any factor or agent so intrusted and possessed of any such document of title, whether derived immediately from the owner or obtained by reason of the factor or agent having been intrusted with the possession of the goods or of any document of title thereto, is to be deemed to have been intrusted with the goods represented by the document of title, every contract pledging or giving a lien upon such document of title is to be deemed to be a pledge of and a lien upon the goods, such factor or agent is to be deemed to be possessed of such goods or document whether the same are in his actual custody or held by any other person subject to his control, or for him or on his behalf, where any advance is *bona fide* made to any factor or agent so intrusted on the faith of any contract in writing to consign, deposit, transfer, or deliver the goods or documents of title, and such goods or documents are actually received by the person making such advance without notice that the factor or agent was not authorised to make the pledge or security, such advance is to be deemed to be an advance on the security of the goods or documents of title, though such goods or documents are not actually received by the person making the same till some period subsequent thereto, any contract, whether made direct with the factor or agent or with any clerk or other person on his behalf, is to be deemed to be a contract made with him, any payment made, whether by money, bill of exchange, or other negotiable security is to be deemed to be an advance within the meaning of s 78, and a factor or agent in possession as aforesaid of such goods or documents is to be taken for the purposes of that section to have been intrusted therewith by the owner, unless the contrary be shown in evidence. All the cases provided for by s 78 of the Act would now appear to be covered by the wider and simpler terms of the Larceny Act, 1901 (1 Edw 7, c 10), s 1, under which proceedings are now usually taken.

(*l*) Larceny Act, 1901 (1 Edw 7, c 10), s 1. This Act is to have effect as part of the Larceny Act, 1861 (24 & 25 Vict c 96), it repeals ss. 75 and 76 of that Act, and s 1 of the Larceny Act, 1901 (1 Edw 7, c 10), is to be deemed to be substituted for those sections, and references in any Act to those sections are to be construed as references to s 1 of the Larceny Act, 1901 (1 Edw 7, c 10). As to evidence, see p 657, note (*b*), *ante*.

(*m*) For definition of property, see Larceny Act, 1861 (24 & 25 Vict c 96), s 1, and p 684, *post*.

(*n*) See *R. v. Cooper* (1874), L. R. 2 C. C. R. 123, *R. v. Newman* (1882),

**SECT. 1.**  
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or apply, pay or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof, or (2) having, either solely or jointly with any other person, received any property (o) for or on account of any other person (p), fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof

This provision does not apply to or affect any trustee on any express trust created by a deed or will (q) or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property affected by the trust or mortgage (r)

The punishment for this offence is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (s).

**SUB-SECT 4 — Falsification etc of Accounts**

**1326** Any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant (t) is by statute guilty of a misdemeanour (u) who, (1) wilfully and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security (x) or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or who, (2) wilfully and with intent to defraud, makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, or any document or account (a)

Falsification  
of accounts.

8 Q. B. D. 706, C. C. R. decided on ss 75, 76 of the Larceny Act, 1861 (21 & 25 Vict c 96), now repealed

(o) See note (a), p 684, *ante*

(p) A debt collector who dishonestly appropriates moneys received for his principal may be convicted of this offence (*R v Lord* (1905), 69 J P 467, C. C. R.), compare *R v Hotine* (1904), 68 J P 143 BOSANQUET, K O, Common Serjeant, where the money having been received by the defendant as deposits from persons whom he engaged as clerks, it was held that the case was not within the Act. The receipt must be for or on account of the prosecutor, and where the money was received from debtors who only knew the defendant as their creditor, and knew nothing of the prosecutor to whom the defendant had transferred his business, an acquittal was directed (*R v South* (1907), 71 J P 191, BOSANQUET, K O, Common Serjeant)

(q) As to trustees, see p 656, *ante*

(r) Larceny Act, 1901 (1 Edw 7, c 10), s 1 (2)

(s) *Ibid*, s 1, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(t) See p 651, *ante*. The record of a taxicab is an account within this section (*R v Solomons* (1909), 25 T L R 747, C. C. A.)

(u) Falsification of Accounts Act, 1875 (38 & 39 Vict c 24), s 1. This Act is to be read as one with the Larceny Act, 1861 (24 & 25 Vict c 96) (*ibid*, s 3). It is sufficient in any indictment under the Act to allege a general intent to defraud without naming any particular person intended to be defrauded (*ibid*, s. 2). To cause fraudulently an innocent person to make, or to concur fraudulently in his making, a false entry is within the Act (*R v Butt* (1884), 15 Cox, C. C. 564, C. C. R.). A person who delivers an account accurate in its details, and which states the final balance as being "balance in hand," does not commit this offence, although he may not have in his possession the amount of such balance (*R v Williams* (1899), 19 Cox, C. C. 239, C. C. R.). As to the use by an agent of a false document with intent to deceive his principal, see p 710, *post*

(x) See p 642, *ante*

(a) Although not so expressly stated in the section, document or account

## SECT 1

**Taking  
Property.**

Destruction  
of book of  
company by  
director etc

The punishment for this offence is penal servitude for not more than seven nor less than two years, or imprisonment with or without hard labour for not more than two years (*b*)

**1327.** Any director, officer, or contributory of any company being wound up is by statute guilty of a misdemeanour (*c*) who (1) destroys, mutilates, alters, or falsifies any books, papers, or securities, or who (2) makes or is privy to making any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person.

The punishment is imprisonment with or without hard labour for not more than two years (*d*)

**1328** Any director, manager, public officer, or member of any body corporate, or public company is guilty of a misdemeanour (*e*) who, with intent to defraud, (1) destroys, alters, mutilates, or falsifies any book, paper, writing, or valuable security (*f*) belonging to the body corporate or company, or (2) makes or concurs in making any false entry, or omits or concurs in omitting any material particular in any book of account or other document

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not less than two years (*g*)

False state-  
ments by  
director etc

**1329** A director, manager (*h*), or public officer of any body corporate or public company is by statute guilty of a misdemeanour (*i*) who makes, circulates, or publishes, or concurs in

here mentioned must be a document or account belonging to or in possession of the employer, or received by the prisoner for or on account of the employer, and must be so alleged in the indictment (*R v Patin*, [1906] 1 K B 7, (C C R)). The falsification of a mechanical means of recording an account is within the Act (*R v Solomons* (1909), 25 T L R 747, C C A)

(*b*) Falsification of Accounts Act, 1875 (38 & 39 Vict c 24), ss 1, 3 Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The defendant may also be fined and required to find sureties for good behaviour Larceny Act, 1861 (24 & 25 Vict c 96), s 117

(*c*) Companies (Consolidation) Act, 1908 (8 Edw 7, c 69), s 216

(*d*) *Ibid* This offence and those previously mentioned in this sub-section are triable at quarter sessions

(*e*) Larceny Act, 1861 (24 & 25 Vict c 96), s 83, see also s 81, and as to evidence p 657, note (*b*), *ante*

(*f*) See p 642, *ante*

(*g*) Larceny Act, 1861 (24 & 25 Vict c 96), s 83

(*h*) A person who is *de facto* manager of the business affairs of the company is a manager within the meaning of the section, although he may not have been formally appointed to that office, but a person who merely controls the policy of the directors or of the company, and who has not been appointed manager, is not within the section (*R v Lawson*, [1905] 1 K B 541, 545, 550, C C R)

(*i*) Larceny Act, 1861 (24 & 25 Vict. c 96), s 84 There is an intent to deceive and defraud if the defendant made or published false statements of account, knowing they were false, with the intent that they should be acted upon by those whom they should reach (*R v Birt* (1899), 63 J. P 328, see also *R London and Globe Finance Corporation, Ltd*, [1903] 1 Ch 728, 732) If it appears to the court having jurisdiction in the winding up of public companies in the course of the winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the



SECT. 1.  
Taking  
Property.

making, circulating, or publishing any written statement or account which he knows to be false in any material particular with intent to deceive or defraud any member, shareholder, or creditor thereof, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*k*).

## SUB SECT. 5 —Robbery

**1330** Robbery is a felony at common law and also by statute, and consists in the felonious taking (*l*) of money or goods of some value from the person of another, or in his presence, if the property is under his immediate and personal care and protection (*m*), against his will and either by violence or by putting him in fear

The punishment is penal servitude for not more than fourteen or less than three years, or imprisonment with or without hard labour for not more than two years (*n*)

Unless there was a putting in fear, there must have been some violence used. The putting in fear must be before or at the time of the taking, it is not sufficient if it only follows it (*o*). A surreptitious taking from the person is not robbery, nor is a sudden

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court may, on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company. In the case of a voluntary winding up the liquidator may, with the previous sanction of the court, prosecute any such officer or member for any such offence, and the expenses of the prosecution are payable out of the assets of the company in priority to all other liabilities (Companies (Consolidation) Act 1909 (8 Edw 7, c 69), s 217). In deciding upon an application for leave to institute such a prosecution the court will look to see whether such facts are made out as that, if they are not shown to be erroneous or displaced by other facts, a conviction ought to ensue, it will not have regard to the interests or advantage of any person or class, but will consider whether a good citizen in discharge of his duty to the State would think that in such a case he ought to prosecute and bear the expense (*Re London and Globe Finance Corporation, Ltd.*, [1903] 1 Ch 728 733, 735), and the court will not refuse to direct a prosecution merely because the law officers have refused to sanction it (*ibid*, see also *Re Denham & Co* (1884), 53 L J (CH) 1113).

(*k*) Larceny Act, 1861 (24 & 25 Vict c 96), s 84, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*l*) Robbery includes a larceny, as to what amounts to a taking in larceny, see p 630, *ante*. There is a sufficient taking even though the goods be only for an instant of time in the robber's possession (*R v Taper* (1784), 1 Leach, 320).

(*m*) 1 Hale, P C 533. If one, having first assaulted another, takes away his horse standing by him, or, having put him in fear, drives his cattle out of his pasture in his presence, or takes up his purse which, in his fright, he has thrown into a bush, these are robberies (1 Hawk P O, c 34 s 8, 2 East, P C 707, *R v Francis* (1735), 2 Stra 1015, *R v Donnelly* (1779), 1 Leach, 193, 199, *R v Selway* (1859), 8 Cox, O C 235).

(*n*) Larceny Act, 1861 (24 & 25 Vict c 96), s 40, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is triable at quarter sessions, but an offence under the Larceny Act, 1861, *supra*, s 43, is not.

(*o*) 1 Hawk P C, c 34, s 9, *R v Gnosil* (1824), 1 C & P 304

**SECT 1**  
**Taking**  
**Property.**

snatching unawares, unless some injury be thereby done to the person, or unless there has been some previous struggle for the possession of the property (*p*)

It is not necessary to allege in the indictment, or to prove that there was actual fear on the part of the person robbed. If money be demanded, and the fact be attended with those circumstances of terror and violence which in common experience are likely to induce a man to part with his property for the safety of his person, the law will presume fear (*q*)

The mode of threatening or the absence of any verbal threat is immaterial, if the circumstances show an intentional putting in fear (*r*). Nor is it necessary that a demand of money should be made, if money is paid from motives of terror (*s*)

It is robbery, if a person is by force or fear compelled to sell his goods at an inadequate price, and if the prisoner's intent was felonious (*t*). The fear may be either of personal violence to the person robbed, or to a member of his family (*u*), or of serious injury to his property (*v*), or of loss of character or place by reason of being charged with unnatural practices, where such a charge is threatened (*w*), whether such charge be true or false (*d*).

Threats to accuse one of a crime other than unnatural practices (*x*), or to accuse a third person of an unnatural offence (*y*), are not sufficient to support an indictment for robbery.

If money is obtained by means of a threat to accuse of unnatural practices, this does not amount to robbery, unless the payment is made at the time, if the payment is not until after the prosecutor

(*p*) 2 East, P C 702 708, *R v Lupton* (1784), 1 Leach, 320, *R v Macanley* (1783), 1 Leach, 287, *R v Baker* (1783), *ibid* 290, *R v Moore* (1784), *ibid* 330, *R v Walls* (1840), 2 Car & Kir 214. But where the prosecutor's watch was fastened to a steel chain which went round his neck, and the prisoner stole the watch by jerking and breaking the chain, a conviction for robbery was affirmed by the judges (*R v Mason* (1820), Russ & Ry 419)

(*q*) Post 128, approved by the judges in *R v Donolly* (1779), 1 Leach, 193, 196, 197, 2 East, P C 710, see also 2 East, P C 711, 1 Hawk P C, c 34, s 9. But if there is no violence, and the prosecutor states that he did not part with his property from any apprehension of violence to his person or injury to his character, but for some other reason, there is no robbery (*R v Reane* (1794), 2 Leach, 616, *R v Fuller* (1820), Russ & Ry 408)

(*r*) As where a man with a drawn sword, or other circumstances of terror indicating a felonious intent, begs alms (2 East, P C 711)

(*s*) *R v Blackham* (1787), 2 East, P C 711, where the prisoner was attempting to commit a rape upon the prosecutrix and without any demand by him, she gave him money to induce him to desist

(*t*) *R v Simons* (1773), 2 East, P C 712, *R v Spencer* (1783), 2 East, P C 712, see 1 Hawk P C, c 34, s 14

(*u*) *R v Donolly*, *supra*

(*v*) *Ibid.*, see *R v Winkworth* (1830), 4 C & P 444

(*w*) *R v Reane*, *supra*, *R v Jones* (1776), 1 Leach, 139, *R v Donolly*, *supra*, *R v Hickman* (1783), 1 Leach, 278, *R v Cannon* (1809), Russ & Ry 146, *R v Eyerton* (1819), Russ & Ry 375, *R v Elmstead* (1802), 2 Russell on Crimes, 106; *R v Stringer* (1842), 2 Mood C C 261, see, however, *R v Taunton* (1840), 2 Mood C C 118

(*x*) *R v Gardner* (1824) 1 C & P, 479, as to attempts to extort money by threats to accuse of crime, see p 666, *post*

(*y*) *R v Knowland* (1796), 2 Leach, 721, 730

(*z*) *R v Edward* (1833), 1 Mood & R 257

has had time to consult another person or to obtain assistance, the offence of robbery is not committed (*g*).

A *bonâ fide* claim of right to the money or goods taken is a good defence to an indictment for robbery (*h*).

The return of the property by the robber will not purge the offence (*i*).

Any property may be the subject of robbery which is capable of being stolen, the value is immaterial, provided it be of any value at all to the prosecutor (*k*). It must be the prosecutor's property and have been in his peaceable possession (*l*).

One or more prisoners may be charged in one indictment with robberies committed upon different persons, if such robberies constituted one entire transaction without an interval of time (*m*).

**1331** If upon the trial of a person upon an indictment for robbery it appears to the jury that he did not commit robbery, but that he committed an assault with intent to rob, they may find him guilty of and he may be punished for the latter offence. No person so tried is liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried (*n*).

Verdict of  
assault with  
intent to rob.

Upon an indictment for an assault with intent to rob the prisoner cannot be convicted of a common assault (*o*).

Upon an indictment for robbery, or for larceny from the person, the prisoner may be convicted of simple larceny (*p*).

**1332** Whoever assaults any person with intent to rob is guilty of felony and liable to penal servitude for not more than five or not less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

Assault with  
intent to  
rob

(*g*) *R v Jackson* (1802), 1 Leach, 193, n

(*h*) *R v Hall* (1828), 3 O & P 409, *R v Hemmings* (1864), 4 F & F 50, where the prisoner had assaulted the prosecutor, who was his debtor, and so obtained a cheque from him, and it was held not to be robbery, see also *R v Boden* (1844), 1 Car & Kn 395

(*i*) 1 Hawk P C, c 34, s 2, *R v Peat* (1781), 1 Leach, 228

(*k*) *R v Bingley* (1833), 5 C & P 602

(*l*) *R v Phipoe* (1795), 2 Leach, 673, where the prosecutor was compelled to give a promissory note, the paper on which it was written being the property of the prisoner, and this was held not to be robbery. Such cases are now met by the Larceny Act, 1861 (24 & 25 Vict c 96), s 48, p 667, *post*

(*m*) *R v Giddins* (1842), Car & M 634, where the indictment contained only one count

(*n*) Larceny Act, 1861 (24 & 25 Vict c 96), s 41. But if a count for an assault with intent to rob is added to an indictment for robbery, the prosecution may be required to elect upon which count they will proceed (*R v Gough* (1831), 1 Mood & R 71)

(*o*) *R v Woodhall* (1872), 12 Cox, C C 240

(*p*) 2 Hale, P C 302

(*q*) Larceny Act, 1861 (24 & 25 Vict c 96), s 42, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The indictment must allege either an intent to rob, or an intent to violently steal (*R v Monteth* (1795), 2 Leach, 702, *R v Huxley* (1842), Car & M 596). There need be no actual demand for money or goods (*R v Trusty* (1783), 1 East, P C 418, *R v Sharwin* (1785), 1 East, P C 421). An assault coupled with a threat to accuse of unnatural practices with a view to extort money is an assault with intent to rob (*R v Stringer* (1842), 2 Mood C C 261). As to the effect of a claim of right to the goods or money demanded, see *R v Boden*, *supra*, as to what amounts to an assault, p. 606 *ante*

**SECT. 1.****Taking  
Property.**

Robbery etc  
by person  
armed with  
weapon

**1333** Everyone is by statute guilty of felony (1) who, being armed with any offensive weapon or instrument, robs, or assaults with intent to rob, any person, or (2) who, together with one or more other persons, robs, or assaults with intent to rob, any person, or (3) who robs any person and, at the time of, or immediately before, or immediately after such robbery, wounds, beats, strikes, or uses any other personal violence to any person (r)

The punishment for such offence is penal servitude for life (s), the offender may also be sentenced to be once, twice, or thrice privately whipped, provided (1) that in the case of a male whose age does not exceed sixteen years the number of strokes at each whipping must not exceed twenty-five, and the instrument used must be a birch rod, (2) that in the case of any other offender the number of strokes at each whipping must not exceed fifty, (3) that the court must in each case specify the number of strokes to be inflicted and the instrument to be used, (4) that no whipping shall take place after the expiration of six months from the passing of the sentence, and (5) that in the case of a person sentenced to penal servitude the whipping must be inflicted before he is removed to a convict prison (t)

Stealing  
from the  
person

**1334** It is by statute (a) a felony to steal any chattel, money, or valuable security from the person

The punishment is penal servitude for not more than fourteen or not less than three years, or imprisonment with or without hard labour for not more than two years (b)

The property stolen must have been completely removed from the person of the prosecutor. An asportation sufficient to constitute simple larceny (c) is not necessarily sufficient to support an indictment for stealing from the person (d), but if the property is temporarily, though but for one moment, in the prisoner's possession, he may be convicted of this offence (e)

#### SUB SECT. 6—*Extortion by Threats*

Demanding  
money etc  
by threaten-  
ing letter

**1335** It is by statute (f) a felony to send, deliver, or utter, or directly or indirectly to cause to be received, knowing the contents

(r) Larceny Act, 1861 (24 & 25 Vict c 96), s 43

(s) *Ibid*. This offence is not triable at quarter sessions

(t) Gaolers Act, 1863 (26 & 27 Vict c 44), s 1. The provisions of this Act also apply to attempts to choke or strangle with intent to commit any indictable offence punishable under the Offences against the Person Act, 1861 (24 & 25 Vict c 100), s 21, p 602, *ante*

(a) Larceny Act, 1861 (24 & 25 Vict c 96), s 40

(b) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(c) See p 630, *ante*.

(d) *R. v Thompson* (1825), 1 Mood C C 78, where the prisoner having lifted a pocket-book partly out of the prosecutor's pocket, it was held that, although guilty of simple larceny, he had been wrongly convicted of larceny from the person. The ruling in this case was disapproved by JERVIS, C.J., in *R v Simpson* (1854), Deane C C 421, 424

(e) *R v Laper* (1784), 1 Leach, 320, where an earring torn from a lady's ear dropped in her hair, *R v Simpson*, *supra*, watch and chain taken, but a key on the chain caught in the prosecutor's clothes and prevented an entire removal.

(f) Larceny Act, 1861 (24 & 25 Vict c 96), s. 44.

SECT. 1.  
**Taking  
Property.**

thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause (*g*), any property (*h*), chattel, money, valuable security (*i*), or other valuable thing.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under sixteen years of age, a whipping may be added (*k*).

The menaces may be of duress or of other personal violence, or of great injury (*l*), or to accuse the prosecutor of misconduct, even though not amounting to an offence against the criminal law (*m*). They must be of such a nature as to unsettle the mind of the person to whom they are made, and take away that element of free voluntary action which alone constitutes consent (*n*), but if the threats are such as ought not to influence anybody, they will not support an indictment (*o*).

If the title to the property demanded is in dispute between the parties, a threat of personal violence if the property is not given up does not constitute the offence, if the prisoner believed he had a legal right to what he demanded (*p*).

Whether a document contains menaces is a question for the jury and not for the judge, unless the judge holds that it can by no possible construction involve a threat (*q*).

It is immaterial whether the menaces or threats be of violence, injury, or accusation to be caused or made by the offender or by any other person (*r*).

As the offence consists in sending or causing the letter to be sent, an admission by the prisoner that he wrote it is not without further evidence sufficient to warrant a conviction (*s*).

To leave such a letter where it is likely to be found by the person whom it is intended to threaten is a sufficient sending (*t*).

(*g*) The words "reasonable or probable cause" apply to the money demanded, not to the truth of an accusation constituting the threat (*R v Hamilton* (1843), 1 Car. & Kir. 212), see also *R v Meard* (1844), 1 Cox, C. C. 22.

(*h*) For definition of "property," see p. 684, *post*.

(*i*) For definition of "valuable security," see p. 642, *ante*.

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 44, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*l*) *R v Smith* (1849), 1 Den. 510, 514.

(*n*) *R v Tomlinson*, [1895] 1 Q. B. 706, C. C. R., *R v Chalmers* (1867), 10 Cox, C. C. 450, C. C. R., as to threatening to accuse of a crime, see ss. 46, 47, and p. 666, *post*.

(*o*) *R v Walton* (1863), Le. & Ca. 288, 298.

(*p*) *R v Tomlinson*, *supra*, at p. 710.

(*q*) *R v Hemmings* (1799), 2 East, P. C. 1116, *R v Walton*, *supra*, at p. 297.

(*r*) *R v Carruthers* (1844), 1 Cox, C. C. 138, *R v Walton*, *supra*, *R v Tomlinson*, *supra*.

(*s*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 49. This also applies to the offences punishable under ss. 45, 46, 47, 48 of the Act (see p. 666, *post*).

(*t*) *R v Howe* (1836), 7 C. & P. 268.

(*u*) *R v Wagstaff* (1819), Russ. & Ry. 398, *R v Grimwade* (1844), 1 Den. 30.

## SECT 1

Taking  
Property.

**1336** It is by statute (a) a felony to demand with menaces (b) or by force any property (c), chattel, money, valuable security (d), or other valuable thing of any person with intent to steal the same.

The punishment for this offence is penal servitude for not more than five or less than three years, or imprisonment with or without hard labour for not more than two years (e)

Letter  
accusing of  
crime

**1337** It is by statute (f) a felony to send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit a rape, or of any attempt to commit a rape, or of any infamous crime (g) with a view or intent to extort or gain by means of such letter or writing any property, chattel, money, valuable security, or other valuable thing from any person

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, and in the case of a male under the age of sixteen years a whipping may be added (h)

Accusation of  
crime for  
the purpose  
of extortion

**1338** It is by statute (i) a felony to accuse or threaten to accuse either the person to whom the accusation or threat is made, or any other person, of any infamous crime (j), with the view or intent to extort or gain from the person so accused or threatened to be

(a) Larceny Act, 1861 (24 & 25 Vict c 96), s 45

(b) As to menaces, see p 665, *ante*. The fact that the property has been completely obtained by means of the threats is no defence (*R v Robertson* (1864), Le & Ca 483). A threat to imprison upon a fictitious charge is a menace within the meaning of the section (*ibid*). It is not necessary to prove an actual demand in words if the circumstances show that there was an attempt by the prisoner to extort payment by threats (*R v Jackson* (1783), 1 Leach, 267). To obtain money by threats, and in particular by the use or threatened use of process of law, was an indictable misdemeanour at common law, provided the threats were of such a nature as to be calculated to overcome a firm and prudent man (*R v Woodward* (1707), 11 Mod Rep 137), but it appears that such threats must have been of personal violence or imprisonment (*R v Southerton* (1805), 6 East, 126, 140, where it was held that obtaining money by a threat to take proceedings for penalties was not so indictable)

(c) For definition of "property," see p 684, *post*

(d) For definition of "valuable security," see p 642, *ante*

(e) Larceny Act, 1861 (24 & 25 Vict c 96), s 45, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions

(f) Larceny Act, 1861 (24 & 25 Vict c 96), s 46

(g) This expression includes sodomy and bestiality, an assault with intent to commit the same, an attempt to commit the same, and a solicitation, persuasion, promise, or threat offered or made to any person to move or induce him to commit or permit the same (*ibid*), but it does not include a threat to accuse of indecent conduct with another male person (*R v Gilgannon* (1899), 63 J P 457, see also *R v Norton* (1838), 8 C & P 671). A threat of this kind may, however, amount to a threat to accuse of solicitation to sodomy or of an attempt to commit or permit that offence, see *R v Cooper* (1849), 3 Cox, C O 547, *R v Bragnell* (1830), 4 Cox, C O 402

(h) Larceny Act, 1861 (24 & 25 Vict c 96) s 46, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions

(i) *Ibid*, s 47

(j) See note (g), *supra*.

accused, or any other person, any property, chattel, money, valuable security, or other valuable thing

SECT. 1.  
**Taking  
Property**

The punishment is the same as that for the last-mentioned offence (k)

**1339** If the defendant intended to extort money by threatening to make an accusation, it is immaterial whether such accusation, if made, would be true or false (l) It is not necessary that the threat should be to accuse before a legal tribunal or an officer of the law, it is sufficient if it is to accuse before any third person (m) If the object of the threat is to induce the person threatened to buy anything, there is an intent to extort or gain by means of the threat (n)

Nature of  
threat

It is for the jury to determine what was the nature of the charge made, and whether the prisoner in fact intended to make, or to threaten to make, an accusation of one of the crimes above mentioned, for this purpose the jury are entitled to consider the whole conduct of the prisoner (o)

To prove the intent to extort, evidence may be given of the obtaining of money by the prisoner by making similar accusations on other occasions (p), unless the intent to extort is manifest from the nature of the threat used (q)

**1340** Everyone is by statute (r) guilty of felony who, with intent to defraud or injure any other person, by any unlawful violence to or restraint of the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime (s), compels or induces any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security (t), or to write, impress, or affix his name or the name of any other person or firm, or the seal of any body, corporate company, or society to any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security

Extorting  
execution of  
valuable  
securities

The punishment for this offence is penal servitude for life or for

(k) Larceny Act, 1861 (24 & 25 Vict c 96), s 47 This offence is not triable at quarter sessions

(l) *R v Menage* (1862), 3 F & F 310, *R v Cracknell* (1866), 10 Cox, C C 408 But it may be material upon the question whether the intention was only to compound a felony or obtain compensation (*R v Richards* (1865), 11 Cox, C C 43) The prosecutor may be cross-examined as to the truth of the accusation with the object of impeaching his credit, but he cannot be contradicted on this point by other evidence (*R v Cracknell, supra*)

(m) *R v Robinson* (1837), 2 Mood & R 14

(n) *R v Redman* (1865), L R 1 C C R 12

(o) *R v Cooper* (1849), 3 Cox, C C 547, *R v Braynell* (1850), 4 Cox, C C 402 In these cases the accusation was only of indecent assault, see also *R v Kain* (1837), 8 C & P 187 So, also, if the meaning of a threatening letter is doubtful or ambiguous, the prosecutor may adduce evidence of facts to show its meaning (*R v Tinsler* (1826), 1 Mood C C 134, *R v Henry* (1850), 4 Cox, C C 213)

(p) *R v Cooper, supra*, at p 549

(q) *R v McDonnell* (1850), 5 Cox, C C 153

(r) Larceny Act, 1861 (24 & 25 Vict c 96), s 48

(s) See note (g) on p 666, *ante*

(t) For definition of "valuable security," see p 642, *ante* An agreement or promise to pay money for a consideration appearing upon the face of the document is a "valuable security," although it is not a negotiable security (*R v John* (1875), 13 Cox, C C 100)

## SECT 1

Taking  
Property.Threatening  
to publish  
a libel

not less than three years, or imprisonment with or without hard labour for not more than ten years (*u*).

**1341** It is by statute (*a*) a misdemeanour to threaten to publish a libel with intent to extort money or any valuable thing

The punishment for this offence is imprisonment with or without hard labour for not more than three years (*b*).

SUB-SECT 7 — *Burglary*

Burglary

**1342** Burglary is the breaking and entering the dwelling-house of another person in the night with intent to commit some felony therein, whether such intent be executed or not (*c*)

Burglary is a felony at common law and by statute (*d*) The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*e*)

Night

The offence must be wholly committed in the night If the breaking be effected in the day and the entry in the night, or *vice versa*, the offence is not burglary (*f*) But if the breaking with intent to commit a felony be on one night and the entry with the like intent on a subsequent night, this is burglary (*g*)

Night is deemed to commence at nine o'clock in the evening of each day and to conclude at six o'clock in the morning of the next succeeding day (*h*)

Dwelling  
house

The place must be a dwelling-house in which a person or his family is in the habit of residing

It is sufficient if the owner occupies the house for a part only of the year (*i*), or if, having occupied it, he leaves it for a time, with the intention of returning to live in it again (*k*), or if he occupies it by his servants only, who are members of his family, though he himself may never have slept there (*l*)

A house to which the owner has only moved his goods without yet having slept there is not his dwelling-house for this purpose (*m*),

(*u*) Larceny Act, 1861 (24 & 25 Vict c 96), s 48, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*a*) Libel Act 1843 (6 & 7 Vict c 96), s 3

(*b*) *Ibid* The offence, it seems is not triable at quarter sessions (Quarter Sessions Act 1842 (5 & 6 Vict c 38), s 1) See also title LIBEL AND SLANDER

(*c*) 1 Hawk P C, c 38, s 1

(*d*) *Ibid*

(*e*) Larceny Act, 1861 (24 & 25 Vict c 96), s 52, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence may be tried at quarter sessions, but if the case appears to be of a grave or difficult nature, the committing magistrate must send it for trial at the assizes (Burglary Act, 1896 (59 & 60 Vict c 57))

(*f*) 1 Hale, P C 551 The offence is then housebreaking If two persons agree to commit a burglary and one alone breaks on one night, and the other enters in his absence on the next night, both are guilty of the whole offence (*R v Jordan* (1836), 7 C & P 432)

(*g*) *Ibid* *R v Smith* (1820), Russ & Ry 417.

(*h*) Larceny Act, 1861 (24 & 25 Vict c 96), s 1

(*i*) 1 Hawk P C, c 38, s 11.

(*k*) *R v Nutbrown* (1750), Fost 76, *R v Murry* (1698), 2 East, P C 496

(*l*) *R v Gibbons* (1821), Russ & Ry 442, *R v Stock* (1810), Russ & Ry 185, *R v Westwood* (1822), *ibid* 495 But if a mere caretaker is put into premises to protect the goods there, neither the owner nor his family or servants having an intention of living there, the house is not the owner's dwelling house (*R v Flanagan* (1810), Russ & Ry 187, *E v Davies* (1800), 2 Leach, 876, *R v Smith* (1787), 2 Leach, 1019, n )

(*m*) *R v Harris* (1795), 2 Leach, 701, *R v Thompson* (1796), *ibid* 771.



nor is a house which has only been used by the owner for the purpose of taking his meals, if neither he nor his family have slept there (n)

SECT. 1.  
**Taking  
Property.**

The building must be of a permanent and not merely a temporary nature (o)

No building, although within the same curtilage with any dwelling-house, and occupied therewith, is deemed to be part of such dwelling-house, unless there is a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other (p), and the outbuilding, to form part of the dwelling-house, must be held with it by the same owner (q)

The ownership of the dwelling-house must be correctly alleged in the indictment (r) The owner for this purpose is the person who occupies the premises in his own right for residential purposes, either by himself or his family or servants (s)

**1343** The breaking which is necessary to constitute burglary may be either actual or constructive Breaking

The breaking must be of some part of the house, and not merely of the outer fence or wall of the curtilage, if such wall is not part of the wall of the dwelling-house or does not open into any outbuildings in respect of which burglary can be committed (t)

(n) *R v Martin* (1806), Russ & Ry 106

(o) So that a tent or booth in a fair or market is not such a *domus mansuonalis* wherein burglary may be committed (1 Hale, P O 557, 1 Hawk P O, c 38, s 17) But a permanent building of mud and brick in which the prosecutor slept, though only during a fair, was held a sufficient dwelling house (*R v Smith* (1835), 1 Mood & R 256)

(p) Larceny Act, 1861 (24 & 25 Vict c 96), s 53 As to breaking into outbuildings not so communicating, see s 55

(q) *R v Jenkins* (1812), Russ & Ry 244

(r) But the court has power to order an amendment in this respect, if any variance appears between the statement in the indictment and the evidence for the prosecution (Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 1, p 334, ante) This is one of the cases in which a local description is necessary, see p 337, ante

(s) *R v Collett* (1823), Russ & Ry 498, *R v Bridges* (1815), 1 Cox, O O 261, where it was held that a tenancy at will was sufficient to constitute ownership As to the occupation by servants of houses or rooms belonging to their masters, see *R v Stock* (1810), Russ & Ry 185, *R v Jubling* (1823) Russ & Ry 525, *R v Camfield* (1824), 1 Mood (' C 42, *R v Witt* (1829), 1 Mood O O 215, *R v Reis* (1836), 7 O & P 568, *R v Jarvis* (1824), 1 Mood. O O 7 As to alleging ownership where the occupation is by parties occupying separate parts, see *R v Jones* (1790), 1 Leach, 537 A club house is not the dwelling-house of the steward, although he resides there (*R v Ashley* (1843), 1 Car & Kir 198) With regard to lodgings, if the owner lives on the premises and there is an interior communication the house must be alleged to be his dwelling house (*R v Rogers* (1772), 1 Leach, 90, n, 2 Kr 183, 64; *R v Sefton* (1811), Russ & Ry 202, *R v Gibbons* (1821), Russ & Ry 442), but if there is no such internal communication, or if the lodging house keeper does not live on the premises, the part broken into must be described as the dwelling-house of the lodger who occupies it (1 Hale, P O 556 *R v Rogers, supra*, *R v Trapshaw* (1786), 1 Leach, 427, *R v Carrill* (1782), 1 Leach, 237) The indictment need not allege the ownership of any goods which may have been stolen, it is sufficient to allege that the goods were in the house (*R v Clarke* (1844), 1 Car & Kir 421)

(t) *R v Bennett* (1815), Russ & Ry 289 (door in a fence opening into a yard), *R v Davis* (1817), Russ & Ry 322 (area gate)

**SECT 1**  
**Taking**  
**Property**

Thus it is not burglary to break chests in a house (a), or external fixtures (b), or internal fixtures or cupboards (c)

It is an actual breaking either to break with the purpose of entering any such part of the house as is mentioned above, or to open with the like purpose either an outer or an inner (d) door or window which is latched or otherwise fastened, or which without being fastened is completely closed (e)

It is not a breaking of a house to open wider a door or window which is already partly open (f), or to enter through a hole in a cellar window (g), or through an existing hole in the roof (h) Lifting a cellar-flap held down by its own weight is a breaking (i)

There is a breaking by construction of law when an entrance to the house is obtained by fraud (k), or by conspiracy (l), or by threats (m), although no part of the house is actually broken

(a) 1 Hale, P C 553, 554

(b) *R v Payne* (1834), 7 C & P 135 (shutter box)

(c) Post 108, 109, 2 East, P C 489

(d) Even though the entering into the house has been through an open door or window, if an inner door is afterwards broken (1 Hale, P C 553, 1 Hawk P C, c 38, s 4, *R v Johnson* (1786), 2 East, P C 488)

(e) 1 Hale, P C 552, *R v Foster* (1828), 1 Lew C O 33, *R v Owen* (1827), 1 Lew C O 35, *R v Laurence* (1830) 4 C & P 231, *R v Jordan* (1836), 7 C & P 432, *Pugh v Griffith* (1836) 7 Ad & El 827 836 (lifting latches), *R v Haines* (1821), Russ & Ry 451, *R v Hyams* (1836), 7 C & P 441, *R v Hall* (1818), Russ & Ry 355, *R v Robinson* (1831), 1 Mood C C 327, *R v Piles* (1824) 1 C & P 300 (opening windows) To pick a lock is a breaking (1 Hale, P C 552, *Re George and Goldsmiths and General Burglary Insurance Association*, [1898] 2 Q B 137, 139), so also is to get down a chimney (1 Hale, P C 552, 2 East, P C 485, *R v Bruce* (1821), Russ & Ry 450)

(f) *R v Smith* (1827), 1 Mood C C 178 But to put the hand through an existing hole in a window, and so to undo the window fastening, is a sufficient breaking, whether or not the hole be enlarged for that purpose (*R v Robinson* (1831), 1 Mood C C 327, *Ryan v Sutcock* (1831), 7 Arch 72, 76)

(g) *R v Lewis* (1827), 2 C & P 628

(h) *R v Spriggs* (1834) 1 Mood & R 357

(i) *R v Russell* (1833) 1 Mood C C 377, *R v Brown* (1799), 2 East, P C 487 There is, however, some authority the other way, see *R v Lawrence* (1830), 4 C & P 231, BOLLAND, B., *R v Callan* (1800), Russ & Ry 157, in which case twelve judges were equally divided

(k) As where lodgings are taken with a design to rob the house (*R v Cassey* (1666), Kel 62 1 Hawk P C, c 38, s 9), or by fraudulently raising the hue and cry and so obtaining entrance with a constable into the house (Kel 82, 1 Hawk P C, c 35, s 10, see also *R v Gascoigne* (1763), 1 Leach, 280, 284), or by pretence of business (*R v Le Mott* (undated), Kel 42, 2 East, P C 485), or by enticing away a servant (*R v Hawkins* (1704), 2 East, P C 485), or by obtaining possession by a fraudulent action at law (*R v Farre*, (1668), Kel 43)

(l) *R v Farre*, *supra*, as, e.g., with the owner's servants (*R v Cornwall* (1730), 2 Stra 881, 2 East, P C 486), where, however, a servant by arrangement with the owner pretended to connive with the prisoner and let him into the house in order that he might be arrested, the prisoner was held not to have committed burglary, though, as there had been an asportation, he was convicted of larceny in the dwelling-house (*R v Johnson* (1841), Car & M. 218)

(m) *R v Swallow* (1813), 2 Russell on Crimes, 6th ed., 8 But only if the house were opened in consequence of the threats and an entry effected, if under the fear of the threats the owner throws money out of the door or window, the offence is not burglary, though it will be robbery if the money is taken up (2 East, P C 486)

SECT 1  
Taking  
Property.

A person who enters the dwelling-house of another with intent to commit any felony therein, or who, being in such dwelling-house, commits any felony therein, and in either case breaks out of the dwelling-house in the night, is deemed guilty of burglary (*n*).

**1344** To constitute the crime of burglary there must be an entry of the premises as well as a breaking, and the entry must be consequent on the breaking (*o*) Entry

The least entry either with the whole or with but part of the body will satisfy the requirement of an entry (*p*), so also will the insertion of any instrument, provided it be introduced for the purpose not merely of making an entry, but also for the purpose of extracting property (*q*), so also will the insertion of any weapon, if for the purpose of killing the inmates of the house (*r*)

If there was a breaking, but there is no sufficient evidence of an entry, the prisoner may be convicted of an attempt to commit a burglary (*s*)

**1345** The intent of the breaking and entering must be to commit either a common law or statutory felony Intent.

The particular felony intended to be committed must be alleged in the indictment and must be proved as laid (*t*), but different

(*n*) Larceny Act, 1861 (24 & 25 Vict c 96), s 51. The section applies, although the prisoner was lawfully in the house, if he committed a felony there (*R v Wheldon* (1839), 8 C & P 717). As in the case of a burglarious breaking in, it will be sufficient if he has broken out by merely lifting a latch (*ibid*). But in *R v Lawrence* (1830), 4 C & P 231, BOLLAND, B, held that, although unlocking and opening the hall-door was a sufficient breaking out, lifting a trap-door over a cellar which was kept down by its own weight was not (*sed quere*, see p 670, note (*s*), *ante*). In *R v M'Kearney* (1829), Jebb, C C 99, it was held by the judges that the prisoner, who had only put his head out of a skylight, which he had broken, and had then fallen back into the room, had broken out.

(*o*) *R v Davis* (1854), 6 Cox, C C 369, but not necessarily on the same night (p 668, *ante*), and see *supra*.

(*p*) 1 Hale, P C 553, 555, 1 Hawk P C, c 38, s 7, *R v Gibbons* (1752), Foat 107, 2 East, P C 490, *R v Bailey* (1818), Russ & Ry 341 (where the hand was put between the glass of an outer window and an inner shutter), *R v Davis* (1823), Russ & Ry 499 (where part of the prisoner's finger went through a window).

(*q*) 1 Hale, P C 555, *R v Hughes* (1785), 1 Leach, 406, *R v Roberts* (1828), Carrington's Supplement, 293, *R v Rust* (1828), 1 Mood C C 183, *R v O'Brien* (1850), 4 Cox, C C 395.

(*r*) 1 Hawk P C, c 38, s 7, *R v O'Brien*, *supra*. It is doubtful whether firing a loaded gun into a house, the gun being entirely outside, is a sufficient entry (see 1 Hale, P C 555, 1 Hawk P C, c 38, s 7, 2 East, P C 490).

(*s*) *R v Spanner* (1872), 12 Cox, C C 155.

(*t*) 3 Co Inst 65, 1 Hawk P C, c 38, ss 36, 38, *R v Knight* (1751), 2 East, P C 510, 511. Thus an indictment lies for burglary with intent to commit a rape, though rape was not a felony at common law, but was made so by statute (*R v Gray* (1721), 1 Stra 481). Although the intent should be expressly alleged in the indictment, it has been held that an allegation that a felony had been committed was, if the commission of such felony were proved, but not otherwise, sufficient, although the intention was not alleged (*R v Farnival* (1821), Russ & Ry 445). In practice it is usual to allege both the intent to commit the particular felony and also, if such be the case, that it was committed. If the intent was to steal the goods then in the house, it should be so alleged, it is not necessary to state the owner of the goods (*R v Laws* (1843), 1 Car & Ku 62, *R v Clarke* (1844), 1 Car & Kir 421).

**SECT 1**      intents may be alleged in different counts of the same indictment (a)

**Taking Property.**

An intent to commit a misdemeanour or trespass is insufficient to support an indictment for burglary (b) It is immaterial whether the intended felony was committed or not

**Evidence**

**1346.** Where several burglaries are committed on one night and the circumstances are intermixed, evidence of the details of each burglary may be given upon the trial of the prisoner for any one of them (c)

**Verdict on indictment for burglary**

**1347** If upon the trial of an indictment for burglary it appears that the house was not a dwelling-house, or that the breaking and entering were not in the night, or that there is no sufficient evidence of the entry, the prisoner may be convicted of house-breaking, or, if the indictment alleges a stealing and the goods stolen from the dwelling-house amounted to £5 in value, of larceny in a dwelling-house to that amount, or, if the indictment alleges a stealing, of simple larceny (d)

Upon an indictment of two persons for burglary and larceny one may be convicted of the whole offence and the other of the larceny only (e)

#### SUB SECT 8—Housebreaking

**House-breaking**

**1348** It is by statute (f) a felony to break and enter (g) any dwelling-house (h), school-house, shop (i), warehouse (k), or counting

(a) *R v Thompson* (1781), 2 East P C 515

(b) 3 Co Inst 65, *R v Dobbs* (1770), 2 East, P C 513

(c) *R v Cobden* (1862), 3 F & F 833 "If crimes do so intermix, the court must go through the detail I remember a case where a man committed three burglaries in one night, he took a shirt at one place and left it at another, and they were all so connected that the court went through the history of the three different burglaries" (*R v Wylie* (1801), 1 Bos & P (N R) 92, per Lord ERLEBOROUGH, C J, at p 94)

(d) *R v Withal* (1772) 1 Leach, 88, *R v Compton* (1828), 3 C & P 418, *R v Brookes* (1842) Car & M 543, but not of a distinct larceny committed on a previous day (*R v Vandercumb* (1796), 2 Leach, 708)

(e) *R v Butterworth* (1823), Russ & Ry 520.

(f) Larceny Act, 1861 (24 & 25 Vict c 96), s 56

(g) As to what amounts to a breaking and entering, see pp 669, 671, *ante* Breaking open or opening the inner door of a shop, communicating with an adjoining house under the same roof, is a breaking of the shop (*R v Wenmouth* (1860), 8 Cox, C C, 345)

(h) As to what is a dwelling house, see p 668, *ante*

(i) It appears to be doubtful whether the shop must be a place for the sale of articles, or whether a workshop (e.g., a blacksmith's shop or forge) is within the section In *R v Sanders* (1839), 9 C & P 79 ALDERSON, B, held it was not, as also did TINDAL C J, in *R v Chapman* (1843), 7 J P 132, but in *R v Carter* (1843), 1 Car & Kir 173, Lord DENMAN, C J, held that it was, and declined to follow *R v Sanders, supra* As the word "shop" is derived from A S *scoppa*, which meant a booth or shed for trade or work, and as the modern ordinary usage is in conformity with that meaning, it is submitted that the view of Lord DENMAN was correct A photographer who, without making any structural alteration in a private house, exhibited photographs outside and used the ground floor for the exhibition of photographs and the sale of albums, cases and frames, the door being kept open by day, was held to have converted the house into a shop (*Willinson v Rogers* (1864), 2 De G J & Sm 62)

(k) A "warehouse" is a place where goods are stowed or kept which are not

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house (*l*) and commit any felony (*m*) therein, or being in any such building to commit any felony therein and to break out of the same

The punishment is penal servitude for not more than fourteen or for not less than three years, or imprisonment with or without hard labour for not more than two years (*n*)

**1849.** It is by statute (*o*) a felony to break and enter (*p*) any dwelling-house (*q*), church, chapel, meeting-house, or other place of divine worship (*r*), or any building within the curtilage, school-house, shop, warehouse or counting-house with intent to commit any felony therein Breaking with intent.

The punishment is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (*s*)

**1850** It is by statute (*t*) a felony to enter any dwelling-house (*a*) in the night (*b*) with intent to commit any felony therein Entering with intent.

The punishment is penal servitude for not more than seven or not less than three years, or imprisonment with or without hard labour for not more than two years (*c*)

**1851** It is by statute (*d*) a felony to break and enter any building, and to commit any felony therein, such building being within the Buildings within curtilage

immediately wanted for sale, and a cellar under a shop, and used for that purpose, is a warehouse (*R v Hill* (1843), 2 Mood & R 458)

(*l*) A "counting-house" is a part of a commercial establishment in which the book-keeping, correspondence etc are carried on. But it has been held that a solicitor's office may be a counting-house (*Re Creeke* (1863), 11 W R. 231). A weighing room at a factory in which accounts of weights and workmen's times were kept, and where wages were paid, was held to be a counting-house within the meaning of the section (*R v Potter* (1851), 2 Den 235), see also *Piercy v Maclean* (1870), L R 5 C P 252, 256, 261

(*m*) If the felony committed in the house is alleged to be larceny there must be some evidence of asportation (as to which, see p 630, *ante*), but it need not be shown that the goods were removed from the house (*R v Amer* (1834), 6 C & P 314). If the indictment alleges a larceny, it must state the goods which were stolen, and where proof of the larceny failed on account of the goods specified not being in the house at the time it was held that the prisoner could not be convicted on that indictment of breaking and entering the house and attempting to steal (*R v M'Pherson* (1837) Denis & B 197, where the goods had been previously stolen by another thief), but as to attempts of this kind, see p 259, *ante*

(*n*) Larceny Act, 1861 (24 & 25 Vict c 96), s 56, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions

(*o*) Larceny Act, 1861 (24 & 25 Vict c 96), s 57

(*p*) As to what amounts to breaking and entering, see pp 669, 671, *ante*, and see note (*m*), *supra*

(*q*) As to what is a dwelling house, see p 668, *ante*

(*r*) As to sacrilege, see p 675, *post*

(*s*) Larceny Act, 1861 (24 & 25 Vict c 96), s 57, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions

(*t*) Larceny Act, 1861 (24 & 25 Vict. c 96), s 54

(*u*) As to what is a dwelling house, see p 668, *ante*.

(*v*) For definition of "night," see p 668, *ante*.

(*w*) Larceny Act, 1861 (24 & 25 Vict. c 96), s 54, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is triable at quarter sessions

(*x*) Larceny Act, 1861 (24 & 25 Vict c 96), s 55

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curtilage (*e*) of a dwelling-house (*f*) and occupied therewith, but not being part thereof (*g*), or being in any such building to commit any felony therein and to break out of the same

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*h*)

**Stealing in**  
**dwelling-**  
**house**

**1352** It is by statute (*i*) a felony (*1*) to steal in any dwelling-house (*k*) any chattel, money or valuable security (*l*) to the value in the whole of £5 or more (*m*), or (*2*) to steal in a dwelling-house any chattel, money, or valuable security to any value, and by any menace or threat to put anyone being therein in bodily fear (*n*)

The punishment for such offence is penal servitude for not more than fourteen years nor less than three years, or imprisonment with or without hard labour for not more than two years (*o*)

**Being found**  
**armed by**  
**night**

**1353** Everyone is by statute (*p*) guilty of a misdemeanour (*1*) who is found by night (*q*) armed with any dangerous or offensive

(*e*) If the building within the curtilage has a communication between itself and the dwelling house, either immediate or by means of a covered and inclosed passage leading from the one to the other it is a part of the dwelling house, and the offence is burglary (see Larceny Act, 1861 (24 & 25 Vict c 96), s 53, and p 669, *ante*) "The curtilage is a small court, yard, grith, or piece of ground attached to a dwelling-house, and forming one enclosure with it or so regarded by the law, the area attached to and containing a dwelling house and its outbuildings" (New English Dictionary, Murray) The outer fence of the curtilage not opening into any of the buildings was no part of the dwelling house, even before the Larceny Act, 1861 (24 & 25 Vict c 96) (*R v Bennett* (1813), Russ & Ry 289) nor was an area gate, if there was a door between the area and the house (*R v Davis* (1817), Russ & Ry 322) East apparently considered the words "within the curtilage" as synonymous with "within the same common fence" (2 P C 193), and see *R v Westwood* (1822), Russ & Ry 495

(*f*) As to what is a dwelling house, see p 668, *ante*

(*g*) As to what is "part thereof," see Larceny Act, 1861 (24 & 25 Vict c 96), s 53

(*h*) *Ibid*, s 53, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is triable at quarter sessions

(*i*) Larceny Act, 1861 (24 & 25 Vict c 96), ss 60, 61

(*k*) The dwelling-house must be such a house that burglary could be committed in it (2 East, P C 499, 614) As to what is such a dwelling house, see p 668, *ante* A person may be convicted of this offence although he himself is the owner of the dwelling house (*R v Bowden* (1813), 2 Mood C C 285)

(*l*) For definition of "valuable security," see p 612, *ante*

(*m*) If the indictment charges only an attempt to steal goods in the dwelling house it need not specify any particular goods (*R v Johnson* (1864), Le & Ca 489) The goods must be under the protection of the house, i.e., deposited there for safe custody, it is not sufficient that they are on the person of one who is in the house, or that they are under the eye or personal care of someone who happens to be there (*R v Owen* (1792), 2 East, P C 643, *R v Castledine* (1792), *ibid.*, *R v Watson* (1794), 2 Leach, 610, 613, n, *R v Campbell* (1792), 2 Leach, 564, *R v Taylor* (1820), 2 Russ & Ry 418, *R v Carroll* (1825), 1 Mood. C C 89) The question whether goods are under the protection of the house or in the personal care of the owner is one for the judge and not for the jury (*R v Thomas* (1827), Carrington, Supplement, 295)

(*n*) The indictment must state that the person in the house was put in fear by the prisoner (*R v Etherington* (1795), 2 Leach, 671)

(*o*) Larceny Act, 1861 (24 & 25 Vict c 96), ss 60, 61, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is triable at quarter sessions

(*p*) Larceny Act, 1861 (24 & 25 Vict c 96), s 58

(*q*) For definition of "night," see p 668, *ante*

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weapon or instrument, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein (r), or (2) who is found by night having in his possession (s) without lawful excuse (the proof of which excuse lies on such person) any picklock key, crow, jack, bit, or other implement of housebreaking (t), or (3) who is found by night having his face blackened or otherwise disguised with intent to commit any felony, or (4) who is found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (a), if the prisoner has been previously convicted either of felony or of such misdemeanour, he may be sentenced to penal servitude for ten years (b)

**1354** It is by statute (c) a felony to break and enter (d) any church (e), chapel (f), meeting-house, or other place of divine worship and commit any felony therein, or being in any such place to commit any felony therein and break out of the same

The punishment is penal servitude for life or for not less than

(r) An indictment under this part of the section must allege the particular house or building intended to be broken or entered, and (probably) the particular felony intended to be committed (*R v Jarrald* (1863), Le & Ca 301)

(s) Where several persons are engaged in one party with the common purpose of housebreaking, the possession of implements of housebreaking by one is the possession of all (*R v Thompson* (1869), 11 Cox, C C 362, C C R)

(t) Any implement capable of being used for the purpose of housebreaking is an implement of housebreaking within the meaning of the statute, though it may also be capable of an innocent use, e.g., a key or a chisel, if the jury find that the prisoner had it in his possession for the purpose of housebreaking (*R v Oldham* (1852), 2 Den 472) In the section as printed by the King's printer there is no comma after the word 'picklock' (see *R v Oldham, supra*, 474). The comma is inserted in Greaves' Criminal Consolidation Act and in 2 Russell on Crimes, 50, but "picklock key" is a phrase in use (see Murray, New English Dictionary, VII, 827) In an indictment under this part of the section, it is not necessary to allege an intent to commit a felony (*R v Bailey* (1853), Dears C C 244)

(a) Larceny Act, 1861 (24 & 25 Vict c 96), s 58 Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1, Larceny Act, 1861, s 117 This offence is triable at quarter sessions

(b) Larceny Act, 1861 (24 & 25 Vict c 96), s 59, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(c) *Ibid*, s 50

(d) As to what amounts to a breaking and entering, see pp 669, 671, *ante*

(e) A vestry formed out of what had formerly been the church porch was held to be part of the church (*R v Evans* (1842), Car & M 298), a church tower, to which access is gained through the church, is part of the church (*R v Wheeler* (1829), 3 O & P 585), neither the ownership of the church, if it is a parish church, nor, if the felony committed therein was larceny, the ownership of the goods, need, it appears, be stated (*R v Nicholas* (1845), 1 Cox, C C 218), but if the goods appertain to the church they may be alleged to be the goods of the parishioners or, in the case of a chapel-of-ease, to be the goods of such and such a person, i.e., the person who has the custody of them (2 East, P C 631), a fixed offertory box and its contents may be alleged to be the property of the vicar and churchwardens, giving their names (*R v Wurtley* (1846), 1 Den 162)

(f) "Chapel" includes only a chapel of the Church of England (*R v Richardson* (1834), 6 C & P 335, *R v Nixon* (1836), 7 C & P 412 decided on stat 7 & 8 Geo 4, c. 29, s 10, which did not in terms mention meeting houses) A dis-enting chapel should be described in an indictment as a meeting-house.

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three years, or imprisonment with or without hard labour for not more than two years (*g*)

**SUB-SECT 9—Receiving Stolen Goods**

**Receiving**  
**stolen goods**

**1355.** Receiving goods knowing them to have been stolen is a common law misdemeanour punishable by fine and imprisonment (*h*)

**Statutory**  
**offence**

**1356** By statute (*i*) everyone is guilty of felony who receives any chattel, money, valuable security (*k*), or other property (*l*) whatsoever the stealing, taking, extorting, obtaining, embezzling or otherwise disposing of which amounts to a felony (*m*), knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled or disposed of

A person charged with this offence may be indicted and convicted either as an accessory after the fact or for a substantive felony (*n*), and in the latter case whether the principal felon has or has not been previously convicted or is or is not amenable to justice (*o*)

The punishment for such receiver, however convicted, is penal servitude for not more than fourteen or not less than three years, or

(*g*) Larceny Act, 1861 (24 & 25 Vict c 96), s 50, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(*h*) 1 Hale, P C 620, the bare reception of the goods with a guilty knowledge did not render the receiver an accessory after the fact, as it was the goods, and not the thief, which were received and harboured, but in Hale's opinion (*ibid*), if the thief came himself to the receiver and delivered the goods to him to keep for him, or if the receiver took the goods to facilitate the thief's escape, or to furnish him with supplies out of them, and so supplied him, this would make the receiver an accessory after the fact

(*i*) Larceny Act 1861 (24 & 25 Vict c 96), s 91

(*k*) For definition of "valuable security," see p 642, *ante*

(*l*) For definition of "property," see p 684, *post*

(*m*) *I.e.*, either at common law or by virtue of the Larceny Act, 1861 (24 & 25 Vict c 96), as to what may be the subject of larceny, see p 636 *et seq*, *ante*

(*n*) *I.e.*, for receiving the stolen goods well knowing at the time when he received them that they had been feloniously stolen, in such an indictment the name of the thief, if it is not known, need not be alleged (*R v Thomas* (1766), 2 East, P C 781, *R v Baxter* (1792), 2 East, P C 781, *R v Jervis* (1833), 6 C & P 156) Where, upon an indictment against one person for stealing and another for receiving the goods "so feloniously stolen as aforesaid," the person alleged to be the thief was acquitted, *PAIRSON, J*, held that the receiver could not be convicted, although the goods were proved to have been stolen by someone (*R v Woolford* (1834), 1 Mood & R 384), but where an indictment alleged in the first two counts that the prisoner stole the goods of *H*, and in the third count that he had received the same goods "so as aforesaid feloniously stolen," and the jury acquitted him on the first two counts, but convicted him on the third, the court upheld the conviction, but without purporting to overrule *R v Woolford*, *supra* (*R v Craddock* (1850), 2 Den 31, see also *R v Huntley* (1860), Bell, C O 238 (where, upon similar facts to those in *R v Craddock*, *supra*, the court held that the words "so as aforesaid feloniously stolen" may be construed to mean simply "stolen goods," and that the words "so as aforesaid" were an immaterial averment)

(*o*) If after the receiver has been convicted the principal is tried and acquitted, the conviction of the receiver will still stand (*R v Hughes* (1860), Bell, C O 242, 248)



imprisonment with or without hard labour for not more than two years, and, if the offender is a male under the age of sixteen, a whipping, but no person, in whatever manner he has been tried for receiving, is liable to be prosecuted a second time for the same offence (p)

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**Taking  
Property.**

**1357** Everyone is by statute (q) guilty of a misdemeanour who receives any chattel, money, valuable, security, or other property, the stealing, taking, obtaining (r), converting, or disposing whereof is made a misdemeanour by the Larceny Act, 1861 (s), or the Larceny Act, 1896 (t), or the Larceny Act, 1901 (u), knowing it to have been unlawfully stolen, taken, obtained, converted or disposed of

Receiving  
property not  
feloniously  
taken

A person charged with this offence may be indicted and convicted thereof whether the principal has or has not been previously convicted, or is or is not amenable to justice

The punishment is penal servitude for not more than seven or not less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under the age of sixteen he may be sentenced to a whipping (a).

**1358** In an indictment for feloniously stealing (b) any property a count or several counts may be added for feloniously receiving such property or any part of it (c) knowing it to have been stolen. The prosecutor is not to be put to his election, and the jury may find a verdict of guilty either of stealing the property or of receiving it knowing it to have been stolen, or that some of the prisoners named in the indictment were guilty of the one offence and some of the other (d)

Indictment  
for receiving

Any number of receivers at different times of the stolen property or parts of it may be charged with substantive felonies in the same indictment and may be tried together, although the thief is not

(p) Larceny Act, 1861 (24 & 25 Vict c 96), s 91, see also the Accessories and Abettors Act, 1861 (24 & 25 Vict c 94), s 3, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(q) Larceny Act, 1861 (24 & 25 Vict c 96), s 93

(r) An indictment for receiving goods obtained by false pretences must allege that they were obtained by false pretences, it is not sufficient to allege that they were "unlawfully obtained, taken, and carried away" (*R v Wilson* (1838), 2 Mood C 52), but the particular false pretences need not be alleged in the indictment (*Taylor v R*, [1891] 1 Q B 201)

(s) 24 & 25 Vict c 96

(t) 59 & 60 Vict c 52 See p 680, *post*, as to this Act, which is to have effect as part of the Larceny Act, 1861 (24 & 25 Vict c 96)

(u) 1 Edw 7, c 10, see p 660, *ante*, as to this Act, which is to have effect as part of the Larceny Act, 1861 (24 & 25 Vict c 96)

(a) Larceny Act 1861 (24 & 25 Vict c 96), s 95, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(b) The same applies where the taking or obtaining is a misdemeanour, no express provision to this effect being necessary as the receiving in such a case is only a misdemeanour, see *supra*

(c) But where an indictment for stealing certain goods contains a count for receiving those and other goods the prosecution will be required to elect upon which charge they will proceed (*R v Ward* (1860), 2 F & F 19) The count for receiving must allege that the money or goods charged to have been received are the same or part of the same as those alleged in the first count to have been stolen (*R v Sarfield* (1852), 6 Cox C C 12, C C R (1r))

(d) Larceny Act, 1861 (24 & 25 Vict c 96), s 92

**SECT 1**  
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included in the indictment or is not in custody or amenable to justice (e)

If upon the trial of two or more persons indicted for jointly receiving it is proved that one or more of them separately received any part of the property, the jury may convict such of them as are proved to have received such part (f)

A receiver may be tried in any place in which he has or has had any of the property in his possession, or where the principal may be tried (g)

**POSSESSION**

**1359** A receiving imports possession, and there must be proved to have been a possession by the accused, either actual or constructive (h), and a control over the goods. The possession of the receiver must be distinct from that of the thief, so that the mere receiving a thief with stolen goods in his possession does not alone constitute a man a receiver of the goods (i). A claim made to the goods is not evidence of possession or receiving (j). It is unnecessary to prove a manual possession of the goods by the prisoner, it is sufficient that they were under his absolute control (k), or that he is in joint possession with the thief (l). Goods which are in the hands of an innocent agent or bailee of the accused are in the constructive possession of the latter (m).

A person who is guilty of stealing goods as a principal in either the first or the second degree cannot be convicted of receiving them (n)

(e) Larceny Act, 1861 (24 & 25 Vict c 96), s 93

(f) *Ibid*, s 94. This section was applied where there was no evidence of any joint receipt but each of the prisoners separately received the whole of the stolen property (*R v Reardon* (1866), L R 1 C C R 31)

(g) Larceny Act, 1861 (24 & 25 Vict c 96), s 96. If upon an indictment against two persons for larceny and receiving the venue is laid in county A, and the count against the receiver alleges the receiving to have been in county B, but does not state that the goods had been received from the thief, the count for receiving is bad as showing no jurisdiction to try in county A (*R v Martin* (1849), 1 Den 398), compare *R v Hanley* (1843), 2 Mood & R 521

(h) Bare knowledge of the whereabouts of stolen goods does not amount to constructive possession, where there is no evidence that the person to whose possession the goods have been traced either saw them or interfered with them (*R v Orris* (1908), 73 J P 15, C C A). A master cannot be convicted on mere receipt by his servant, there must be evidence that the servant received with the authority or knowledge of the master (*R v Pearson* (1908), 72 J P 451, C C A)

*R v Hiley* (1850), 2 Den 37, 48, 50

*R v Hill* (1849), 1 Den 453

*R v Smith* (1855), Deans C C 491, *R v Hobson* (1854), Deans C C

*R v Miller* (1853), 6 Cox, C C 353, C C R (Ir)

(i) *R v Smith, supra*

(m) *R v Cryer* (1857), Deans & B 324, *R v Rogers* (1865), L R 1 C C R

1.

(n) *R v Owen* (1825), 1 Mood, C C 96, *R v Ferkans* (1852), 2 Den 459, *R v Coggins* (1873), 12 Cox, C C 517, C C R. In these cases the principal in the first degree delivered the goods to the principal in the second degree, and it was held that the latter could not be convicted of receiving, see also *R v Kelly* (1847), 2 Car & Kir 379, *R v Dyer* (1801), 2 East, P C 767, *R v Atwell* (1801), 2 East, P C 768, *R v Hilton* (1858), Bell, C C 20, 26, *R v Gruncell* (1839), 9 C & P 365, *R v Densley* (1834), 6 C & P 399. As to goods stolen abroad and brought by the thief into this country, see p 660, *post*

**1360** A husband may be convicted of knowingly receiving property stolen by his wife (o), but a wife cannot be convicted of knowingly receiving property stolen by her husband (p)

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If a wife receives stolen property directly from her husband, she ought not to be convicted of receiving, as it is to be assumed that she acted under marital coercion (q)

Husband and  
wife

Where a husband and wife are jointly indicted for receiving, the wife may be convicted if there is evidence of a receiving by her separate and apart from the husband (r)

If stolen goods are received by a wife without her husband's knowledge, and he, upon becoming aware of it, passively assents to what she has done but takes no active part in the matter, he is not guilty of receiving (s), but it is otherwise if, although he may not touch the stolen property, he ratifies what she has done (t)

**1361** It is immaterial whether the accused received the goods for profit, or merely to assist the thief, or for the mere purpose of concealment (u)

What is  
receiving.

A receiver from another guilty receiver may be convicted of this offence (v)

If the accused has stolen the goods from the thief, or taken them from him without his concurrence, he cannot, it seems, be convicted of receiving them (y), he commits a new larceny of the goods

At the time of the receiving the goods must still be stolen property, if, after the stealing but before the receiving, they have come back into the possession of the owner or his agent the accused cannot be convicted of receiving (z)

If, after the larceny and before the receiving, there has been a change of form in the chattel stolen but the identity remains, the receiver may be convicted of this offence (a) But if the indictment charges a stealing and receiving of goods and the evidence shows that it was only the proceeds of the stolen goods which were received by the person accused as receiver, the latter cannot be convicted on that indictment (b)

(o) *R v M'Atthey* (1862), 1 e & c 250

(p) *R v Brooks* (1853), Deans C C 164

(q) *R v Archer* (1820), 1 Mood C C 113, *R v Brooks* (1853), Deans C C 184, *R v Vurdnapper* (1860), 8 Cox, C C 281, C C R

(r) *R v Barnes* (1900), 69 L J (Q B) 651, C C R

(s) *R v Dring* (1857), Deans & B 329

(t) As by bargaining with the thief as to the price (*R v Woodward* (1862), Le & Ca 122)

(u) *R v Davis* (1833), 6 C & P 177, *R v Richardson* (1834), 6 C & P 335, 336

*R v Reardon* (1866), L R 1 C C R 31

*R v Brett* (1845), 1 Cox, C C 261 *R v Wade* (1844), 1 Car & Kir 730

*R v Dolan* (1853), 6 Cox, C C 449, C C R, *R v Schmidt* (1866), 1 C C R 15, *R v Hancock* (1878), 14 Cox, C C 119, *R v Villinsky*, [1892] 2 Q B 597, C C R

In these cases the property had been stolen, but was recovered by the prosecutors or their representatives, who then, with the view of entrapping the receiver, caused it to be delivered to him

(a) As where a sheep was stolen and converted into mutton (*R v Cowell* (1796), 2 East, P C 617, and see p 282, ante)

(b) *R v Walkley* (1829), 4 C & P 132 where six £100 notes were stolen by the thief, who changed them into notes of smaller denomination which he

**SECT 1**  
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**1362** To establish the statutory offence of receiving, the goods received must be proved to have been stolen; taken, or obtained under such circumstances as to constitute a crime either against the common law or against the Larceny Act, 1861 (c), or some Act to be read with it (d). A person cannot, therefore, be convicted upon an indictment charging him with feloniously receiving goods stolen by one member of a partnership or one joint owner from another (e), or by a wife from her husband (f), but in the latter instance (g) the accused may be indicted for the common law misdemeanour of receiving stolen goods (h).

To prove that the goods were stolen a confession by the thief is admissible, if it was made in the prisoner's presence, but not otherwise, if the thief has been convicted on his own confession or otherwise, proof of his conviction is not evidence, on the trial of the receiver, that the goods were stolen. In other respects evidence of the larceny which would be admissible against the thief is admissible as *prima facie* evidence on the trial of the receiver (i).

The thief is an admissible witness, but the alleged receiver should not be convicted on his evidence alone without corroboration (k).

Receiving  
property  
stolen abroad

**1363** Any person who, without lawful excuse, receives or has in his possession in the United Kingdom (l) any property stolen outside the United Kingdom, knowing it to have been stolen, may be by statute indicted for such offence in any county or place in which he has or has had the property (m).

delivered to the other prisoner who was charged with receiving the £100 notes. Whether such a receiver can be convicted upon a separate indictment which charges him with receiving the proceeds of the stolen property is doubtful, see *R v Chapple* (1810), 9 O & P 350, *R v Robinson* (1861), 4 F & F 43, *R v Jellhoff* (1908), 1 Cr App Rep 10. 2 Russell on Crimes, 4th, n.

(c) 24 & 25 Vict c 91.

(d) See Larceny Act, 1891 (59 & 60 Vict c 52), s 1 (1) and Larceny Act, 1901 (1 Edw 7 c 10), s 2 (2). As to the indictment, see *R v Struth*, [1908] 1 K B 617.

(e) This being an offence created by the Larceny Act, 1868 (31 & 32 Vict c 116) s 1 see p 630 *ante*. *R v Smith* (1870) 1 R 1 O O R 266.

(f) An offence against the Married Women's Property Act, 1882 (45 & 46 Vict c 75), ss 12, 16, see p 631, *ante*. *R v Streeter*, [1900] 2 Q B 601 O C R. The rule was the same before that Act (*R v Kenny* (1877), 2 Q B D 307, O C R, distinguishing *R v Deer* (1862) 32 L J (M C) 33, O C R, where the wife had been assisted by another person in stealing the goods).

(g) And also, it is submitted, in the former.

(h) *R v Payne*, [1906] 1 K B 97, O C R. In such a case it is not necessary that it should appear on the face of the indictment that the goods were stolen under such circumstances that there was no offence at common law or under the Larceny Act, 1861 (24 & 25 Vict c 96).

(i) *R v Turner* (1832), 1 Mood C C 417, C C E, *R v Cox* (1838), 1 F & F, 90, *R v Kelly* (1900) 64 J P 81, BRUCE, J. It appears impossible to reconcile these cases with the ruling of ROSANQUET, J, in *R v Blick* (1830), 4 O & P 377.

(k) *R v Haslam* (1766), 1 Leach, 418, *R v Robinson* (1864), 4 F & F 43.

The mere fact that the goods were found at the alleged receiver's house has been held not to be a sufficient corroboration, as the thief himself might have put them there (*R v Pratt* (1865), 4 F & F 315).

(l) See *R v Graham* (1901), 65 J P 248. In that case the prisoners, who had themselves stolen goods in Paris, were convicted at the North London Sessions of having such goods in their possession in the United Kingdom.

(m) Larceny Act, 1891 (59 & 60 Vict c 52), s 1 (1), *R v Pansie* (1897), 61 J P 536. The Act is to be construed and have effect as part of the Larceny Act,

SECT 1,  
Taking  
Property.

For this purpose property is deemed to have been stolen where it has been taken, extorted, obtained, embezzled, converted, or disposed of under such circumstances that if the act had been committed in the United Kingdom the person committing it would have been guilty of an indictable offence according to the law for the time being of the United Kingdom (*n*)

Such offence of receiving is a felony or misdemeanour according as the act committed outside the United Kingdom would have been a felony or misdemeanour if committed in England or Ireland (*o*).

The punishment for such offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*p*)

**1364** If any person in any one part of the United Kingdom receives or has in his possession any money or other property which has been stolen or otherwise feloniously taken in any other part of the United Kingdom, such person knowing such property to have been stolen or otherwise feloniously taken, he may be indicted, tried and punished in that part of the United Kingdom where he so receives or has such property as if it had been originally stolen or taken in that part (*q*). Venue.

**1365.** In an indictment for receiving stolen goods it must be alleged, and it must also be proved, that the accused at the time when he received the goods knew that they were stolen or dishonestly obtained (*a*). It is not necessary to show that he knew the exact nature of the principal offence, nor that his knowledge should have amounted to certainty. It is sufficient if the jury is satisfied that he believed that the property had been stolen or dishonestly obtained (*b*). Indictment.  
Evidence.

The possession by a person of property which has been recently stolen is some evidence, in the absence of a reasonable explanation by him as to how it came into his possession, that he either stole it or received it knowing it to be stolen. Whether it is evidence of larceny or of receiving depends upon the circumstances of the case (*c*). The weight of such evidence depends upon the nature of Possession  
of property  
recently  
stolen

1861 (24 & 25 Vict c 96) (*ibid*, s 1 (1)). The Channel Islands are not part of the United Kingdom, and if goods are stolen there and received in England the indictment must be under this Act (see *R v Delamail* (1861), 11 Cox, C C 207)

Larceny Act, 1896 (59 & 60 Vict c 52), s 1 (2)

(*o*, *Ibid*, s 1 (3))

(*p*, *Ibid*, s 1 (1)), Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1

(*q*, Larceny Act, 1861 (24 & 25 Vict c 96), s 114

(*a*) *R v Wilson* (1838), 2 Mood C C 52. It is sufficient to allege knowledge that the goods were "feloniously stolen," without stating whether the theft was felony at common law or by statute (*R v Stride*, [1908] 1 K B 617 C C R.)

(*b*) *R v White* (1849), 1 F & F 665, see *R v Adams* (1858), 1 F & F 66

(*c*) *R v Langmead* (1864), Le & Ca 427. "If no other person is involved in the transaction forming the subject of the inquiry, and the whole of the case against the prisoner is that he was found in the possession of the stolen property, the evidence would, no doubt, point to a case of stealing rather than a case of receiving, but in every case, except indeed where the possession is so recent that it is impossible for anyone else to have committed the theft, it becomes a mere question for the jury whether the person found in possession of the stolen property stole it himself or received it from someone else (*ibid*, per POLLOCK, C B, at p 439)

**SECT 1**  
**Taking**  
**Property**

the goods and the length of time which has elapsed from the time when they were stolen to the date when they are proved to have been in the possession of the accused (d)

If a person is accused of receiving stolen property, and the stolen property is found in his possession under circumstances requiring him to give a reasonable account of how he became possessed of it, and he gives such a reasonable account by stating the name of the person from whom he received it, who is shown to be a real person, it is incumbent upon the prosecution, unless there is other substantial evidence against the prisoner negating the truth of his account, to show that that account is false by calling as a witness the person named by the prisoner. If the prisoner's account is unreasonable or improbable on the face of it, or if there is other evidence against him, the onus of proving the truth of his account lies on him (e)

(d) 2 East, P. O. 665, *R v Cockin* (1836), 2 Lew C C 235, *R v Adams* (1829), 3 C & P 600, where PARKER, J., directed an acquittal upon the ground that possession of the stolen property (an axe, a saw, and a mattock) three months after it was lost was not such a recent possession as to require the prisoner to show how he came by it. In *Anon* (1826), 2 C & P 459, the goods had been lost for sixteen months, and the prisoner was not required to account for having them in his possession. In *R v Partridge* (1836), 7 C & P 551, upon an indictment for stealing forty yards of cloth of which the prisoner was found in possession two months after it was missed, PATERSON, J., allowed the case to go to the jury, observing that if the goods were such as to pass from hand to hand readily two months would be a long time, but that there it was not so. In *R v Cooper* (1852), 3 Car & Kir 318, the only evidence against the prisoner was that he was found in possession of a horse which had been lost six months previously, MAULE J., said that he ought not to be called upon to account for it, and directed an acquittal. A similar course was taken by CHANNILL, B., in *R v Harris* (1860), 8 Cox, C C 33, where a sheep found in the prisoner's possession had been lost six months previously.

The goods must be proved to have been in the possession of the prisoner or under his control, that they were in a place to which he and others had access is insufficient in the absence of other evidence against him (*R v Hughes* (1878), 14 Cox C C 223, C C R.). The mere fact that the goods were found on the prisoner's premises is not of itself sufficient evidence that he received them or that they were in his possession, as they might have been placed there by the thief or some other person without his knowledge or assent (*R v Pratt* (1865), 4 F & F 315), see also *Ex parte Laundry* (1823) 2 Dow & Ry (N C) 572, where the court quashed a conviction under stat 11 Geo 1, c 30 s 16, for knowingly harbouring and concealing three gallons of smuggled spirits, upon the ground that the mere fact of the spirits being found in the defendant's house during his absence could not be considered conclusive evidence of knowingly harbouring them there. In *R v Mattheus* (1850), 1 Den 596 601, COLERIDGE, J., said that *prima facie* if stolen goods are found in a man's house he, not being the thief, is a receiver, but in that case there was evidence that the prisoner had bought the stolen fowls from the thief. In *R v Orris* (1808), 73 J P 15, C C A., it was held that bare knowledge of the whereabouts of stolen goods does not amount to constructive possession.

(e) *R v Crouhurst* (1844), 1 Car & Kir 370, *R v Smith* (1845), 2 Car. & Kir 207, *R v Harriss* (1848), 2 Cox, C C 487, compare *R v Wilson* (1857), Dears. & B 157, C C R., where the court, although evidently disapproving the conviction declined to quash it on the ground that there was some evidence against the prisoner, see also *R v Riston* (1884), 15 Cox, C C 478, C C R., where, the thief having given evidence proving the untruth of the prisoner's account the prosecution did not call the person from whom the prisoner said he bought the goods, and the court upheld the conviction. As to the effect of a presumption of guilt on the defence see *R v Stoddart* (1909), 23 T L R 612, C C A.

**1366** To prove the guilty knowledge evidence may be given of the prisoner having received from the thief other property stolen by him from the prosecutor (*f*)

SECT. 17  
Taking  
Property.

Where proceedings are taken against any person for having received property knowing it to be stolen, or for having in possession stolen property, evidence may be given at any stage of the proceedings that there was found in his possession (*q*) other property (*h*) stolen within the preceding twelve months, and such evidence may be taken into consideration for the purpose of proving that he knew the property which forms the subject of the proceedings against him to be stolen (*i*)

Evidence of  
possession of  
other stolen  
property

Where evidence has been given that the property alleged in the indictment to have been stolen was found in the possession of the person charged as receiver, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen. Not less than seven days' notice in writing (*j*) must, however, be given to the accused that evidence is intended to be given of such previous conviction. It is not necessary, for the purpose of giving such evidence, to charge the previous conviction in the indictment (*k*)

Evidence of  
previous  
convictions

(*f*) *R v Dunn* (1826), 1 Mood C C 146, *R v Duns* (1833), 6 C & P 177. In *R v Nicholls* (1858), 1 F & F 51, upon an indictment against two men for stealing and receiving lead, COCKBURN, C.J., allowed evidence to be given of several sales of similar lead during the month previous to the alleged stealing, the lead sold on the last occasion being identified as the prosecutor's property, but he confined the evidence to sales made by the prisoners when in company together. See as to evidence of this class, p. 380, *ante*.

(*q*) The property must have been found in his possession at the same time when the property which is the subject of the indictment was found in his possession. The fact that the prisoner had been in possession and had disposed of other stolen property before the goods which are the subject of the indictment were found in his possession is not admissible in evidence, unless the case falls within the principle of *R v Dunn* (1826) 1 Mood C C 146, and *R v Nicholls* (1858), 1 F & F 51 (*R v Drage* (1878), 14 Cox, C C 85, *R v Carter* (1884), 12 Q. B. D. 522, C C R). But the two findings need not be absolutely simultaneous, and it is sufficient that the goods previously stolen are found on a second search of the prisoner's premises made shortly after the search when the goods which are the subject of the indictment were found (*ibid.*, per HAWKINS, J.).

(*h*) The fact that this property is the subject of another indictment against the prisoner does not render this evidence inadmissible (*R v Jones* (1877), 14 Cox, C C 3).

(*i*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19. Evidence of this kind is not admissible where the real charge against the prisoner is larceny, although the indictment contains a count for receiving (*R v Gird* (1906), 70 J. P. 514, C C R).

(*j*) See as to this *R v Whitley* (1908), 72 J. P. 272.

(*k*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19. The evidence is admissible although the charge of receiving does not stand alone but is coupled with a count for stealing (*R v Bromhead* (1906), 71 J. P. 103, C C R). Where the case is substantially one of stealing the mere fact of adding a count for receiving will not make such evidence admissible (*ibid.*, and see *R v Gird*, *supra*).

## SMOT. 1

Taking  
Property.Receiving  
goods stolen  
from the  
Post Office

**1367** It is a felony (*l*) to receive any mailbag or any postal packet (*m*), or any chattel, or money, or valuable security (*n*), the stealing, or taking, or embezzling, or secreting whereof amounts to a felony under the Post Office Act, 1908 (*o*), if the receiver knows that the same has been so feloniously taken, embezzled, or secreted, and has been sent or intended to be sent by post

This offence is punishable in the same way as the stealing, taking, embezzling, or secreting the same, and the offender may be indicted and convicted, whether the principal offender has or has not been previously convicted, or is or is not amenable to justice (*p*)

Pawnbroker

**1368** If a pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods knowing them to be stolen, the court before which he is convicted may, if it thinks fit, direct that his licence shall cease to have effect, and it shall so cease accordingly (*q*)

## SUB SLIC 10—Orders for Restitution of Property.

Restitution  
of stolen  
property

**1369** If any person guilty of any felony or misdemeanour mentioned in the Larceny Act, 1861 (*r*), or the Larceny Act, 1896 (*s*), in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security (*t*), or other property (*u*) whatsoever is indicted for such

(*l*) Post Office Act, 1908 (8 Edw 7, c 48), s 52

(*m*) Evidence that any article is in the course of transmission by post, or has been accepted on behalf of the Postmaster-General for transmission by post, is sufficient evidence that the article is a postal packet (Post Office Act, 1908 (8 Edw 7, c 48), s 71)

(*n*) "Valuable security" has the same meaning in the Post Office Act, 1908 (8 Edw 7, c 48) as in the Larceny Act, 1861 (24 & 25 Vict c 96) (as to which see p 612, *ante*), and includes anything which is a valuable security within the meaning of that Act and any part of such thing (Post Office Act, 1908 (8 Edw 7, c 48) s 89)

(*o*) 8 Edw 7, c 48, as to the offences which amount to felonies under this Act, see p 644, *ante*

(*p*) Post Office Act, 1908 (8 Edw 7, c 48), s 52 As to venue, see s 72 The property may be alleged to belong to His Majesty's Postmaster-General (s 71)

(*q*) Pawnbrokers Act, 1872 (35 & 36 Vict c 93), s 19

(*r*) 24 & 25 Vict c 96

(*s*) 59 & 60 Vict c 52, which relates to property stolen abroad and received in the United Kingdom, see p 680, *ante* This Act is to be construed and have effect as part of the Larceny Act 1861 (24 & 25 Vict c 96) (*ibid*, s 1 (4)) An order of restitution cannot be made where the conviction is under the Post Office Act, 1908 (8 Edw 7, c 48) (*R v Jones* (1880), 14 Cox, C C 528), or for forgery (*R v Rolfe* (1889) 53 J P 523), nor, it is submitted, upon a conviction of a husband or wife under the Married Women's Property Act, 1882 (45 & 46 Vict c 75), see *R v Payne*, [1906] 1 K B 97, C C R

(*t*) For the definition of "valuable security" see p 642, *ante*

(*u*) The term "property" in the Larceny Act, 1861 (24 & 25 Vict c 96), includes every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to, or evidencing the title or right to any property or giving a right to recover or receive any money or goods, and also includes not only such property as shall have been originally in the possession or under the control of any party, but also any property into



**SECT. 1.**  
**Taking**  
**Property.**

offence by or on behalf of the owner of the property (b), or his executor or administrator (c), and convicted thereof, the property is to be restored (d) to the owner or his representative, and the court before whom any person is tried for any such felony or misdemeanour (e) has power to award from time to time writs of restitution for the property or to order the restitution thereof in a summary manner (f)

If, however, it appears that any valuable security has been *bond fide* paid or discharged by some person liable to the payment thereof, or, being a negotiable security, has been *bond fide* taken or received by transfer or delivery by some person for a just and valuable consideration without any notice that it had by any felony or misdemeanour been stolen, obtained, converted, or disposed of, the court cannot order the restitution of such security (g)

or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise (Larceny Act, 1861 (24 & 25 Vict c 96), s 1)

(b) The prosecution of an offender by the Director of Public Prosecutions has, for the purpose of enabling a person to obtain a restitution of property, or obtaining, exercising or enforcing any right, claim or advantage whatsoever, the same effect as if such person had been bound over to prosecute, and had prosecuted the offender, provided that such person gives all reasonable information and assistance to the director in relation to the prosecution (Prosecution of Offences Act, 1879 (42 & 43 Vict c 22), s 7)

(c) See also 1 Hale, P C 542

(d) The words in the Larceny Act, 1861 (24 & 25 Vict c 96), s 100, are "the property shall be restored." Although, notwithstanding these words, the court has a discretion as to whether or not an order of restitution shall be made (see p 687, *post*), yet even before the passing of the Sale of Goods Act, 1893 (56 & 57 Vict c 71), s 24 (1) (as to which, see p 686, *post*), their effect was that immediately upon the conviction the legal right to the goods reverted in the prosecutor if he had lost it by a sale in market overt or otherwise (*Horwood v Smith* (1788), 2 Term Rep 750, *Vilmon v Bentley* (1886), 18 Q 1 D 322, C A, affirmed (1887), 12 App Cas 471, but as to the last-mentioned case, see p 686, *post*)

(e) Formerly the court of King's Bench, as part of its judgment upon an appeal of larceny, could award a writ of restitution. The King's Bench Division has now no such power except upon a conviction in that court (*R v London Corporation* (1869), L R 4 Q. B 371)

(f) Larceny Act, 1861 (24 & 25 Vict c 96), s 100. The procedure is now always by a summary order. The last reported writ of restitution appears to have been in *Burgess v Coney* (1697), Trowaine's Pleas of the Crown, p 315. A form of the writ is given in 4 Chitty, Criminal Law, 491. See also *Golightly v Reynolds* (1771), Loft, 88, 90, 91

At common law an order of restitution could only be made upon a conviction on appeal, and not upon a conviction on indictment, the goods in the latter case, if in the convict's possession, or waived (*i.e.*, thrown away in flight) by him, being forfeited to the Crown or the lord of the franchise. By stat. (1529) 21 Hen 8, c 11, the power to order restitution to the owner was given to the court before whom a person was convicted upon a prosecution by the owner by indictment for robbery or larceny, and the title of the Crown and of a purchaser in market overt was in such a case defeated.

(g) S 100 of the Larceny Act, 1861 (24 & 25 Vict. c 96), adds the words "or any reasonable cause to suspect." It is submitted that these words, which were taken from stat 7 & 8 Geo 4, c 29, s 57, and were in conformity with the law as declared in *Gill v Cullett* (1824), 5 Dow & Ry (κ B) 324, are now

**SMO 1**  
**Taking**  
**Property.**

The provision for restitution does not apply in the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods (*h*) for any misdemeanour (*i*) against the Larceny Act, 1861 (*h*), or the Larceny Act, 1901 (*i*)

**Revesting**  
**property**

**1370** Where goods have been stolen and the offender is prosecuted to conviction the property in the goods reverts in the person who was the owner or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise (*m*), and an order of restitution can in such a case be made in his favour

Where goods have been obtained by fraud or other wrongful means not amounting to larceny the property in such goods does not revert in the person who was the owner of the goods by reason only of the conviction of the offender (*n*) But if the goods are in the possession of the defendant, the owner by disaffirming the fraudulent transaction regains a right to the property, and in such a case an order for restitution should be made

impliedly repealed, at any rate so far as bills of exchange, promissory notes, and cheques are concerned, by the Bills of Exchange Act, 1883 (45 & 46 Vict c 61), ss 29, 38, 90, and that if the holder of such a document without notice of any defect of title, has given value for it, an order of restitution cannot be made against him, notwithstanding negligence on his part The words referred to are therefore omitted in the text

(*h*) Larceny Act, 1861 (21 & 25 Vict c 96), s 100 For definition of "documents of title to goods" see Larceny Act, 1861 (21 & 25 Vict c 96), s 1, p 642, *ante*

(*i*) As to these misdemeanours, see pp 657 *et seq.*, *ante* The provisions of the Larceny Act, 1901 (1 Edw 7, c 10), s 1, are substituted for ss 75 and 76 of the Larceny Act, 1861 (21 & 25 Vict c 96) and an order of restitution cannot therefore be made upon a conviction for fraudulent misappropriation under the Larceny Act 1901 (1 Edw 7, c 10) (*R v Bucknall* (1905), 69 J P 376), *Sir F Furion, K C*, Recorder of London)

(*h*) 24 & 25 Vict c 96, s 100

(*i*) 1 Edw 7, c 10

(*m*) Sale of Goods Act, 1893 (56 & 57 Vict c 71), s 24 (1), *Horwood v Smith* (1784), 2 Term Rep 750, *Scattergood v Sylvester* (1850), 15 Q B 506 It is enacted by the Sale of Goods Act, 1893 (56 & 57 Vict c 71), s 21 (2), that nothing in the Act shall affect the provisions of the Factors Act, 1889 (52 & 53 Vict c 45), or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof, and it was held in *Payne v Wilson*, [1895] 1 Q B 653, by the King's Bench Division, that when a title has been acquired under the Factors Act 1889 (52 & 53 Vict c 45), s 9, by a person who has obtained possession of goods for value from one who has bought or agreed to buy the goods, his title is not divested by a conviction of the latter for larceny as a bailee of the goods The judgment in this case was reversed on appeal ([1895] 2 Q B 537, C A), but only on the ground that there was in that case no agreement to buy

(*n*) Sale of Goods Act, 1893 (56 & 57 Vict c 71), s 24 (2) Before this Act it had been held by the House of Lords in *Bentley v Vilmont* (1887), 12 App Cas 471, overruling *Moyce v Newington* (1878), 4 Q B D 32, that the effect of the Larceny Act, 1861 (21 & 25 Vict c 96), s 100, was that upon a conviction for obtaining goods by false pretences, the property in the goods was revested in the prosecutor as against an innocent purchaser from the fraudulent person, although the prosecutor, induced by the fraud, had sold the goods to the fraudulent person, and so passed the property to him The Sale of Goods Act, 1893 (56 & 57 Vict c 71) s 24 (2), overrides *Bentley v Vilmont*, and an order of restitution cannot therefore be made in such a case (*R v Walker* (1901), 65 J P 729, *R v George* (1901), 65 J P 729). If the conviction is for obtaining

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Taking  
Property.

If such owner parted with his property in the goods when they were obtained from him by fraud an order of restitution may be made in his favour as against the person convicted of the fraud, or his agent (o), or a donee from him, or an assignee with notice of the fraud, or an innocent holder for value whose title accrued after the contract induced by fraud had been revoked, but not as against an innocent holder for value whose title accrued before such revocation (p)

**1371** An order of restitution can only be made against a person who is in possession of the goods at the time of the conviction (q) It can only be made in respect of the goods specified in an indictment upon which an offender has been convicted or their proceeds (r) A person against whom an application for an order of restitution is made is entitled to be heard in opposition (s)

Order for  
restitution

The court has a discretion as to whether or not it will make the order (t), and if it refuses to make it the title (if any) of the prosecutor to the goods is not affected by such refusal (a)

An order may be made for the restitution of the proceeds of the stolen goods to the prosecutor, if such proceeds are in the hands of the convict or of an agent for him (b)

If a person is indicted for larceny and outlawed an order of restitution may be made (c)

by false pretences, but the evidence shows that the offence really amounted to larceny, an order of restitution can be made against an innocent holder for value, see *R v Walker* (1901), 65 J P 729, and p 702, *post*

(o) *R v George* (1901), 65 J P 729, and see *Re Vautin, Ex parte Saffery*, [1899] 2 Q B 549

(p) See Sale of Goods Act, 1893 (56 & 57 Vict c 71), s. 23, and title SALE OF GOODS

(q) It cannot be made against a person who has parted with the goods, even with notice of the larceny (*Horwood v Smith* (1786), 2 Term Rep 700, *Vilmon v Bentley* (1886), 18 Q B D 322 331, C A)

(r) *R v London Corporation* (1858), E B & E 509, S C, *R v Pierce*, 8 Cox, C C 344 If in the possession of a third person the goods ought to be produced and identified before an order is made (*R v Macklin* (1850), 11 Cox, C C 216, *R v Goldsmith* (1873), 12 Cox, C C 594, *R v Smith* (1873), 12 Cox, C C 597, *R v Ford* (1869), 11 Cox, C C 320)

(s) *R v Macklin, supra*

(t) *Vilmon v Bentley supra*, at p 327

(a) *Scattergood v Sylvestor* (1850), 15 Q B 506, *Vilmon v Bentley, supra* In this case the court which tried the prisoner had refused to make an order of restitution

(b) See the definition of "property" in the Larceny Act, 1861 (24 & 25 Vict c 96), s 1 (p 684, *ante*), *R v Powell* (1836), 7 O & P 640 If the proceeds are in the hands of an innocent third party who holds them for value an order of restitution ought not to be made as regards such proceeds (*Lindsay v Cundy* (1876), 1 Q B D 348 The judgment in this case was reversed on appeal ((1878) 3 App Cas 459), but not on this point), see also *R v Justices of Central Criminal Court* (1886), 17 Q B D 598, 18 Q B D 314, C A, and *R v Elliott* (1908) 1 Cr App Rep 15

(c) The outlawry for felony being equivalent to a conviction (1 Hale, P O 545, 2 Hawk P C, c 48, s 22) This is not so if the outlawry is for misdemeanour (*R v Tippin* (1689), 2 Salk 494) But outlawry is practically obsolete, see p 431, *ante* It appears that an order of restitution cannot be made in favour of an alien enemy (Bro Abr tit Restitution, 35)

## SECT. 1.

**Taking  
Property.**

Restitution  
of stolen  
goods  
pawned.

A person against whom an order of restitution is made has no right of appeal against it to the Court of Criminal Appeal (*d*).

**1372** If any person is convicted in any court of feloniously taking or fraudulently obtaining any goods and chattels, and it appears to the court that the same have been pawned with a pawnbroker, the court on proof of the ownership of the goods may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan, or of any part thereof, or without such payment, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting (*e*)

Compensation  
to innocent  
purchaser  
of stolen  
property

**1373** Where a prisoner is convicted of larceny or any other offence which includes the stealing of any property, and it appears by the evidence that the prisoner has sold the stolen property to a person who has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, the court may, on the application of such purchaser and on the restitution of the stolen property to the prosecutor, order that out of such moneys a sum not exceeding the amount of the proceeds of the sale be delivered to the purchaser (*f*)

The court of trial may, upon the application of any person aggrieved, and immediately after the conviction of any person for felony, award any sum of money, not exceeding £100, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the felony. The amount so awarded is to be deemed a judgment debt due to the person entitled to receive it from the convict, and may be ordered to be paid out of any moneys taken from the convict on his apprehension, or may be enforced in the same way as a judgment or order of any court for the payment of any costs in any civil action or proceeding may for the time being be enforced (*g*)

SECT. 2—*Obtaining Property by Fraud.*

Obtaining  
property by

**1374** If a person obtains the property of another by fraud in such circumstances that the ownership of the property passes to

(*d*) *R v Elliott*, [1908] 2 K B 452, C C A. Nor is there an appeal to any other court although if the order has been made at quarter sessions it can, if wrongly made, be quashed by *certiorari*. As to the suspension of the operation of an order of restitution pending an appeal by the convict and the power of the Court of Criminal Appeal to rescind or vary such order if the appeal is allowed, see p. 437 *ante*.

(*e*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 30 (2). As regard goods obtained by fraud this provision must be read subject to the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24 (2), p. 686, *ante*. The discretionary power given by the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 30, to make a restitution order conditional upon the whole or part of a pawnbroker's advance being repaid to him only applies where the pledge is for a sum not exceeding £10, see s. 10 of that Act. And see title **PAWNBROKERS AND PLEDGERS**.

(*f*) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 9.

(*g*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 4, see *R v Ivett* (1870), 11 Cox, C C 602.

such person with the consent of the owner, this does not constitute larceny (*h*), nor at common law does it constitute a criminal offence at all, unless it amounts to a cheat or a forgery (*i*)

SECT. 2.  
Obtaining  
Property  
by Fraud.

SUB-SECT 1—Common Law Cheat

**1375** Obtaining the property of another by fraud does not amount to a cheat at common law unless it is effected by a deceitful and illegal practice, not amounting to felony, which directly affects or may affect the public (*h*), and the contrivance used must be of

Cheating

(*h*) See 2 East, P C 816, *R v Prince* (1868), L R 1 C C R 150, and p 638, *ante*. If the owner is tricked by a person into parting with the possession or temporary use of property, and the person appropriates the property to his own use with a dishonest mind, such person is guilty of larceny (*R v Russell* [1892] 2 Q B 312, C C R, *R v Buckmaster* (1887), 20 Q B D 182, C C R). B by a mistake, induced in consequence of the fraud of A, believes that A is C, and B, acting under this belief, enters into a contract with A and delivers goods to him in the belief that he is C. As B never intended to contract with A, the property does not pass to A, and if A appropriates the goods, he is guilty of larceny (*Gundy v Lindsay* (1876), 3 App Cas 459). If a servant or agent with only a limited authority to dispose of property is induced by fraud to part with the property in a case to which his authority does not extend, the property does not pass and the person who so obtains it is guilty of larceny (*R v Longstreth* (1826), 1 Mood C C 137), see *Oppenheimer v Frazer*, [1907] 2 K B 50, C A.

(*i*) As to the distinction between a cheat and a forgery at common law, see *R v Ward* (1727), 2 Stra 717.

(*h*) 2 East, P C 816, *R v Braslford*, [1905] 2 K B 730, at p 745. At common law fraud, "to be indictable, must be such a one as affects the public, as if a man uses false weights and measures, and sells by them to all or many of his customers, or uses them in the general course of dealing, so if a man defrauds another under false tokens, so if there be a conspiracy to cheat" (*R v Wheatly* (1761), 2 Burr 1125, *per* Lord Mansfield, C J, at p 1127, and see *R v Young* (1789), 3 Term Rep 98, *per* Buller, J, at p 104, *R v Lara* (1796), 6 Term Rep 56). The following are instances of cheats indictable at common law—Preparing false evidence (*R v Vreones*, [1891] 1 Q B 360, C C R), making other deceitful contrivances to interfere with the administration of justice (2 East, P C 821, *Onnealy Newell* (1807), 8 East, 304), selling unwholesome provisions (*R v Treves* (1796), 2 East, P C 821, *R v Dixon* (1814), 3 M & S 11, *R v Mucharty* (1705), 2 Ld Raym 1179, 3 Ld Raym 235), non-accounting or false accounting by a public officer (*R v Benbridge* (1783), 22 State Tr 1, *R v Comings* (1696), 6 Mod Rep 179, *R v Martin* (1809), 2 Camp 268), fraudulent enlistment by an apprentice (*R v Jones* (1777), 1 Leach, 174), fraudulent pretending to have power to discharge a soldier and taking money to discharge him (*R v Serlested* (1627), Lat 202), using false weights or measures or tokens, or marks of a public nature, putting a false mark or token on an article to make it appear to be genuine (*R v Closs* (1658), Dears & B 460), playing with false dice (*Maddock's Case* (1619), 2 Roll Rep 107, 2 East, P C 820), conspiracy to defraud (*R v Orbell* (1703), 6 Mod Rep 42, 2 East, P C 823), obtaining a passport from the Foreign Office by false representations (*R v Braslford*, [1905] 2 K B 730). Some of the cheats which were indictable at common law are now made statutory offences (see Gaming Act, 1845 (8 & 9 Vict c 109), s 17, Fine Arts Copyright Act, 1862 (25 & 26 Vict c 68), s 7, Falsification of Accounts Act, 1875 (38 & 39 Vict c 24), s 1, Admiralty Powers etc. Act, 1865 (28 & 29 Vict c 124), s 6, Sale of Food and Drugs Act, 1875 (38 & 39 Vict c 63), ss 3, 4, Weights and Measures Act, 1878 (41 & 42 Vict c 49), s 25, Government Annuities Act, 1882 (45 & 46 Vict c 51), ss 11, 12, Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 2, Weights and Measures Act, 1889 (52 & 53 Vict c 21), s 22 (see s 33), Inland Revenue Regulation Act, 1890 (53 & 54 Vict c 21), s 12, Police Act, 1890 (53 & 54 Vict c 45), s 9, Markets and Fairs (Weighing of Cattle) Act, 1891 (54 & 55 Vict c 70), s 3, Anchors and Chain

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such a character that common prudence and caution are not sufficient security against a person being defrauded thereby (*l*).

A mere private cheat or imposition, even if accompanied by a false affirmation, is not indictable as a cheat at common law, if no false token is used (*m*). And even the use of a false token or of a forged document does not amount to a cheat at common law, unless some property is obtained by means of such use (*n*). A common law cheat is a misdemeanour.

The punishment is imprisonment for a term not exceeding two years with or without hard labour, or a fine with or without imprisonment (*o*).

**SUB-SECT 2—False Pretences**

**Obtaining**  
**chattel etc**  
**by false**  
**pretences,**

**1376** By statute (*p*) it is a misdemeanour for a person by any false pretence to obtain from another any chattel, money, or valuable security with intent to defraud (*q*).

Cables Act, 1890 (62 & 63 Vict c 23), ss 13—16. As to fraudulent enlistment, see Army Act, 1881 (44 & 45 Vict c 58), ss 96, 99. Misconduct on the part of a public officer in performing a statutory duty is not indictable when the statute imposing the duty provides other remedies (*R v Hall*, [1891] 1 Q B 747).

(*l*) 1 Hawk P C, c 23, s 1, and see *R v Jones* (1703), 1 Silk 379, *R v Nehuff* (1705), 1 Salk 151, *R v Wheatly* (1761), 2 Burr 1120, at pp 1127, 1129.

(*m*) *R v Pinkney* (1733), 2 East, P O 818, *R v Wheatly* (1761), 2 Burr 1125.

(*n*) See *R v Hamilton*, [1901] 1 K B 740, O C R. A forgery at common law is only indictable as a cheat at common law, when some person is actually prejudiced (*R v Ward* (1727), 2 Stria 747).

(*o*) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 29, see *R v Hamilton*, [1901] 1 K B 740, O C R. The offence is triable at quarter sessions.

(*p*) Larceny Act, 1861 (24 & 25 Vict c 96), s 88.

(*q*) The first statute against false pretences was the stat (1541) 33 Hen 8, c 1, which made it an offence for any person falsely and deceitfully to obtain or get into his hands or possession any money, goods, chattels, jewels, or other things of any other person by colour and means of a false token or counterfeit letter made in any other man's name. This statute was extended by the stat (1757) 30 Geo 2, c 24, s 1, which made it an offence knowingly and designedly, by false pretences, to obtain money, goods, wares or merchandises, with intent to cheat or defraud any person of the same. The stat (1757) 30 Geo 2, c 24, s 1, was extended by the stat (1812) 52 Geo 3, c 64, s 1, so as to include the obtaining of any bond, bill of exchange, bank note, promissory note, or other security for the payment of money, or any warrant or order for the payment of money or delivery or transfer of goods or other valuable thing. These three statutes were repealed by stat (1827) 7 & 8 Geo 4, c 27, and their place was taken by stat (1827) 7 & 8 Geo 4, c 29, s 53, which provided that every person who should, by any false pretences, obtain from any other person any chattel, money, or valuable security with intent to cheat or defraud any person of the same, should be guilty of a misdemeanour. Under the stat (1827) 7 & 8 Geo 4, c 29, it was formerly necessary to allege in an indictment for false pretences an intent to defraud some particular person, but this was made unnecessary by the Criminal Procedure Act 1851 (14 & 15 Vict c 100), s 8, which made it sufficient to allege simply an intent to defraud. The provisions of stat (1827) 7 & 8 Geo 4, c 29, s 53, and of the Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 8, were repealed by stat. (1861) 24 & 25 Vict c 95, and were re-enacted by the Larceny Act, 1861 (24 & 25 Vict c 96), s 88, with some alterations and additions. The word "cheat" was omitted from the phrase "with intent to cheat or defraud," because it means the same as "defraud" and is therefore unnecessary (see

The punishment for the offence is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years (r)

**SECT. 2.**  
**Obtaining**  
**Property**  
**by Fraud.**

Winning  
money etc.  
by fraud  
at gaming

**1377** A person who, by any fraud or unlawful device or ill-practice (1) in playing at or with cards, dice, tables, or other game, or (2) in bearing a part in the stakes, wagers, or adventures, or (3) in betting on the sides or hands of those that play, or (4) in wagering on the event of any game, sport, pastime or other exercise, wins from any other person to himself or to any other or others any sum of money or valuable thing, is by statute to be deemed guilty of obtaining such money or valuable thing with intent to defraud such persons (s)

*R v Ingham* (1859), Bell, C C 181, at p 185. A proviso was added, making it unnecessary to allege any ownership of the chattel, money, or valuable security (Larceny Act, 1861 (24 & 25 Vict c 96), s 88). This renders obsolete the cases of *R v Norton* (1858) 8 C & P 196, *R v Martin* (1838) 8 Ad & El 481, *Sill v R* (1853), 1 E & B 553. A section (s 89) was also added, which extends the meaning of the word "obtain", it provides that a person who, by any false pretences, causes or procures any money to be paid, or any chattel or valuable security to be delivered to any other person for the use or benefit, or on account of the person making the false pretences, or of any other person, with intent to defraud, is to be deemed to have obtained such money etc within the meaning of s 88, s 89 renders obsolete the cases of *R v Warell* (1829), 1 Mood C C 224 (where it was held that obtaining credit in account by a false pretence was not within the stat (1827) 7 & 8 Geo 4, c 29, s 53), *R v Garrett* (1853), Dears C C 232 (where it was held that under the stat 7 & 8 Geo 4, c 29, s 53, the obtaining must be by the person who made the false pretence or his agent), *R v Martin* (1859), 1 F & F 501 (where, by a false pretence made to B, A obtained the delivery to C of certain goods which he sold to C, and for which he received payment from C, and it was held that A could not be found guilty of an indictment under the stat (1827) 7 & 8 Geo 4, c 29, of obtaining the goods from B by false pretences (see Greaves, Criminal Law Consolidation Acts, 2nd ed., 177). Except on points to which these alterations and additions apply, the decisions on the stat (1827) 7 & 8 Geo 4, c 29, s 53, as amended by the Criminal Procedure Act, 1851 (14 & 15 Vict c 100), ss 8, 12, are authorities on the present law. The decisions on the statutes before stat (1827) 7 & 8 Geo 4, c 29, are sometimes now quoted as authorities, but are to be used with caution owing to the difference in language between those statutes and the statutes now in force (see *R v Bowen* (1849), 13 Q B 790, per DENMAN, C J, at p 794, commenting on *R v Henderson* (1841), 2 Mood C C 192).

(r) Larceny Act, 1861 (24 & 25 Vict c 96), s 88, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. Either in lieu of or in addition to the penal servitude a fine may be imposed, and the offender may be required to enter into his own recognisances and to find sureties, both or either, for keeping the peace and being of good behaviour (Larceny Act, 1861 (24 & 25 Vict c 96), s 117). A previous conviction for any other crime before the commission of the offence of obtaining property by false pretences is not a matter which can be alleged in an indictment for false pretences (*R v Horn* (1883), 15 Cox, C C 205, C C R). The offence is triable at quarter sessions.

(s) Gaming Act, 1815 (8 & 9 Vict c 109), s 17. "Tables," it seems, means the game of backgammon (Bailey's English Dictionary, *sub voce* "Backgammon"). It is not necessary to state in the indictment to whom the sum of money or valuable thing belongs (*R v Moss* (1856), Dears & B 104, per POLLOCK, C B, at p 108). An omission to state such ownership is at all events cured by verdict (*R v Moss*, *supra*, per ERLE, J, at p 109). The material part of the indictment in that case was as follows: "That W M on the of in the year of our Lord by fraud, unlawful device and ill practice in playing at and with cards, unlawfully did win from one H F B to a certain

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**Obtaining**  
**Property**  
**by Fraud.**

Pretending to  
 exercise  
 witchcraft

**1378** Everyone is by statute guilty of an indictable misdemeanour (t) who (1) pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or (2) undertakes to tell fortunes, or (3) pretends from skill or knowledge in any occult or crafty science to discover where and in what manner any goods or chattels, supposed to have been stolen or lost, may be found.

The punishment for this offence is imprisonment for a year without hard labour (u).

Obtaining  
 execution of  
 security etc  
 by fraud

**1379** A person is by statute guilty of a misdemeanour (x) who, with intent to defraud or injure any other person by any false pretence, fraudulently causes or induces any other person to execute, make, accept, indorse, or destroy the whole or any part of any valuable security or to write, impress, or affix his name or the name of any other person, or of any company, firm, or copartnership, or the seal of any body corporate, company, or society upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security.

False  
 pretences  
 and larceny

**1380** If a person is tried on an indictment for the misdemeanour of obtaining property by false pretences, and the evidence shows that his offence amounts to larceny, he may, nevertheless, be convicted of the misdemeanour. If, however, he is tried for the misdemeanour, he cannot afterwards be prosecuted for larceny on the

person whose name is to the jurors unknown, a certain sum of money with intent to cheat him, the said H F B of the same." It does not seem that the provisions of s 88 of the Larceny Act, 1861 (24 & 25 Vict c 96), apply to this indictment. It seems, therefore, that an allegation to defraud a particular person is necessary. To constitute the offence there must be fraud or an unlawful device or ill practice during the game etc., it is not sufficient, if fraud is resorted to in order to induce the prosecutor to play in the game (*R v Bailey* (1850), 4 Cox, C. C 390). It is not clear whether it is necessary to allege in the indictment the name of the game in the course of which the fraud is used, but the evidence must show that there was some "game, sport, pastime, or exercise" played. Tossing with coins, if not a game or sport, is a "pastime or exercise" within the statute (*R v O'Connor* (1881), 15 Cox, C. C 3, O O R). A bet over a conjuring trick or slight of hand or other trick is not within the statute (*R v Hudson* (1860), Bell, O C 263). If several persons join together in a fraudulent design to cheat some other person, as by inducing such person by fraud to play in a game or by any other act which if done by one person is not within the statute, an indictment will lie against the confederates for a conspiracy to defraud (*R v Bailey* (1850), 4 Cox, C C 390).

(t) Witchcraft Act, 1735 (9 Geo 2, c 5), s 4. A person professing to tell fortunes "to deceive or impose upon" any person is also punishable as a rogue and vagabond under the Vagrancy Act, 1824 (5 Geo 4, c 83), s 4 (see *Penny v. Hanson* (1887), 18 Q. B. 478, *Monck v. Hill* (1877), 2 Ex. D. 268).

(u) Witchcraft Act, 1735 (9 Geo 2, c 5), s 4. The offender may also be ordered by the court before which he is tried to give sureties for good behaviour in such sum and for such time as the court may think proper, and if so ordered, may be imprisoned until such sureties are given (*ibid*). The offence is, it seems, triable at quarter sessions.

(x) Larceny Act, 1861 (24 & 25 Vict c 96), s 90. See *R v Gordon* (1889), 23 Q. B. D. 354, O C R., s 88 of the Larceny Act, 1861 (24 & 25 Vict c. 96), does not apply to an indictment for this offence, and it is necessary to name in such an indictment the person whom the defendant intended to defraud (Archbold, Criminal Pleading, 23rd ed., 617). In other respects *mutatis mutandis* the indictment will be in the same form as an indictment for obtaining money etc. by false pretences, see p. 694, *ante*.



same facts (y) The result is the same if the evidence shows that the offence amounted to some felony other than larceny (a).

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Obtaining  
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—  
Essentials of  
the offence.

1381. The essential ingredients of the misdemeanour of obtaining goods etc by false pretences are four—there must be a false pretence made by the defendant to some other person, there must be knowledge on the part of the defendant that the pretence was false, there must be an obtaining of money, or a chattel, or a valuable security, by means of such false pretences, and there must be an intent to defraud (b)

The false pretence must be of a fact that exists or has existed; a pretence that something will be done or will occur in the future is not of itself sufficient (c)

(y) Larceny Act, 1861 (24 & 25 Vict c 96), s 88, *R v King* (1896), 66 L J (Q B) 57, C C R, [1897] 1 Q B 214, U O R, as to the difference between larceny and obtaining by false pretences, see p 689, ante If there is any doubt whether an offence amounts to larceny or false pretences, the better course is to indict the offender for false pretences, as on an indictment for false pretences the offender may be found guilty, if the false pretences are proved, although the facts amount to larceny, but on an indictment for larceny the offender cannot be found guilty, if the facts amount to false pretences On an indictment for false pretences, if the facts show larceny, the defendant cannot be convicted, unless the alleged pretences are proved (*R v Bulmer* (1861), Le & Ca 476)

(a) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 12 The court may, if it thinks fit, in such a case discharge the jury, and direct that the defendant be indicted for the felony

(b) *R v Aspinall* (1876), 2 Q B D 48, C A, at p 57

(c) "A mere lie about an existing fact told for a fraudulent purpose" is a false pretence (*R v Woolley* (1850), 1 Den, 659, per ALDERSON, B, at p 561), see Summary Jurisdiction Act, 1899 (62 & 63 Vict c 22), s 3 The following are instances of false statements or representations which have been held to be pretences of existing or past facts That the defendant had been entrusted by the Duke of L to take some horses from Ireland to London and had been detained so long by contrary winds that his money was spent (*R v Villeneuve* (1778), 3 Term Rep, cited at p 104, see *R v Wallot* (1871), 12 Cox, C C 68, C C R), that one of the defendants had made a bet of 500 guineas "with a colonel of the army then at Bath" that A B would run ten miles in an hour (*Young v R* (1759), 3 Term Rep 98), that the defendant, a carrier, had delivered goods to the consignee, who had given a receipt for them, but that the defendant had lost or mislaid the receipt (*R v Aney* (1801), 2 East, 30), that a certain document was a lease for nine years of a certain house (*R v Grubby* (1845), 1 Cox, C C 249), that the defendant had sufficient funds to pay a bill for £2,638 except the sum of £300 (*R v Crossley* (1837), 2 Mood & B 17); that the defendant was a single man and able to contract a valid marriage with the prosecutrix, and was in a position to maintain an action for breach of promise of marriage against the prosecutrix (*R v Copeland* (1842), Car & M 516), that the defendant was Mr H. (*R v Bloomfield* (1842), Car & M 537), that the defendant was a captain in the Dragoon Guards (*R v Hamilton* (1845), 1 Cox, C C 244), that a club for which the defendant was canvassing was "a very strong club" and had £7,000 in the bank (*R v Welman* (1853), Dears C C 188), that a customer for whom the defendant had agreed to make false teeth had refused to pay him any money on account (*R v Jones* (1853), 6 Cox, C C 467), that the defendant wanted some goods for J S, who was a person to whom the defendant "durst trust £1,000" (*R v Archer* (1855), Dears C C 449), that a house had been built on some land which the defendant wished to mortgage (*R v Burgon* (1836), Dears & B. 11), that mortgaged property was unincumbered (*R v Meakin* (1869), 11 Cox, C C 270, C C R, and see *R v Sumpson* (1865), 62 L T 772), that a £1 note was a £5 note (*R v Jessop* (1858), Dears & B 412), that a "flash note" was a genuine note (*R v Wells* (1840), cited at Dears & B.

## SECT 2

Obtaining  
Property  
by Fraud.Indictment  
and evidence

**1382** An indictment for obtaining property by a false pretence must allege that the defendant made a certain false pretence, and

36, *R v Coulson* (1850), 1 Den 592, that a worthless cheque or note was a valuable security (*R v Douvy* (1868), 37 L J (M C) 52, C C R, *R v Hazelton* (1874), L R 2 C C R 134, *R v Jarman* (1878), 14 Cox, C C 111, C C R, see *R v Smith* (1854), 6 Cox, C C 314, and *R v Walne* (1870), 11 Cox, C C 647, C C R), that a forged order for the payment of money was genuine (*R v Prince* (1868), L R 1 C C R 150), that a person who lived in a large house "down the street," and who had a daughter married some time back, had been "at the defendant about some carpet," and had asked him to procure a piece of carpet (*R v Burnside* (1860), Bell, C C 282), that the defendant was authorised to order linen on behalf of a hospital (*R v Franklin* (1864), 4 F & F 94), that the defendant had power to bring back the prosecutor's husband, who had deserted her (*R v Giles* (1865), Le & Ca 502), that the defendant could communicate with the spirits of the dead (*R v Lawrence* (1877), 36 L T 404), that the defendant was carrying on a *bona fide* business, or a *bona fide* extensive business (*R v Crab* (1868), 11 Cox, C C 85, C C R, *R v Cooper* (1877), 2 Q B 110, C C R, *R v King*, [1897] 1 Q B 214, C C R, *R v Rhodes*, [1899] 1 Q B 77, C C R, and see *R v Randell* (1867), 16 Cox, C C 335, C C R), that a particular amount of money was owing from the prosecutor (or someone else) to the defendant (or someone else) (*R v Woolley* (1850), 1 Den 559, *R v Leonard* (1818), 1 Den 304, *R v Barnes* (1850), 2 Den 59, *R v Withall* (1798), 2 East, P O 830, *R v Taylor* (1883), 13 Cox C C 265, but see *R v Outes* (1855), Deans C C 459), that the defendant had done work which he had not done (*R v Rigby* (1858), 7 Cox, C C 507, *R v Hunter* (1867), 10 Cox, C C 642, C C R), that a greater weight of goods had been delivered than was actually the case (*R v Bagleton* (1855), Deans C C 516, 515), that defendant was collecting information for a new directory which W & Co were getting up (*R v Speed* (1881), 15 Cox, C C 24, C C R) that defendant had got a carriage and put and expected it down "that day or the next" and that he had a large property abroad (*R v Howarth* (1870), 11 Cox, C C 588, C C R) See also *R v Paynter* (1908), 25 T L R 191, C O A, where the false pretence was that persons could earn money by writing. Many cases of false pretences arise when a contract is entered into in consequence of the false pretence (*R v Kemick* (1843), 5 Q B 49, *R v Asterley* (1835), 7 C & P 191, *R v Abbott* (1847), 1 Den 273, *R v Park* (1847), 1 Den 276, *R v Garlick* (1847), 1 Den 276, *R v Goss* (1860), Bell, C C 206, *R v Martin* (1867), L R 1 C C R 56). Mere commendation, however extravagant, of an article or of a business offered for sale is not a false pretence (see *R v Bryan* (1857), Deans & B 265, *R v Williamson* (1869), 11 Cox C C 328, *R v Levine* (1867), 10 Cox, C C 374). It is doubtful, however, whether these cases are now of any authority, see 2 Russell on Crimes, 6th ed, 495, and *R v Lewis* (1869), 11 Cox, C C 401. A misstatement of fact as to the quality or weight of goods may amount to a false pretence (*R v Ardley* (1871), 40 L J (M C) 85, C C R, *R v Foster* (1877), 2 Q B 110, C C R, *R v Kenrick* *supra*, *R v Sherwood* (1857), Deans & B 251, *R v Lee* (1864), Le & Ca 416, *R v Dundas* (1853), 6 Cox, C C 380, *R v Suter* (1867), 10 Cox, C C 577, C C R, *R v Hall* (1842), Ca & M 249, *R v Stevens* (1844), 1 Cox, C C 83, *R v Roebuck* (1856), Deans & B 24). The decisions to the contrary effect of Lord ELLENBOROUGH C J, in *R v Pywell* (1816), 1 Stark 402, and of LITTLEDALE, J, in *R v Codrington* (1825), 1 C & P 661, are not now authorities (see *R v Kenrick* (1843), 5 Q B 49, at p 64, *R v Ward* (1841), 1 Cox, C C 101, at p 102, *R v Bates* (1848), 3 Cox, C C 201). The false pretence may be by conduct with or without the use of any spoken or written words (*R v Barnard* (1837), 7 C & P 781, *R v Story* (1805), Russ & Ry 81, *R v Jackson* (1813), 3 Camp. 370, *R v Leeth* (1807), Russ & Ry 127, *R v Goss* (1860), Bell, C C 208, *R v Hazelton* (1874), L R 2 C C R 134, *R v Murphy* (1876), 13 Cox, C C 298, C C R (Irish), *R v Bull* (1877), 13 Cox, C C 608, C C R, *R v Jarman* (1878), 14 Cox, C C 111, C C R, *R v Hunter* (1867), 10 Cox, C C 642, C C R, *R v Poull* (1894), 15 Cox, C C 568, C C R, *R v Sampson* (1865), 49 J P. 807, C C R). But there must be some deceit spoken, written or acted, to constitute a false pretence (see *R v Jones*, [1898] 1 Q B 119,

must expressly allege that the pretence was false (*d*); it must set out the false pretence sufficiently (*e*) It is sufficient, if the effect of the pretence is set out, it is not necessary to state the words actually used (*f*)

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**Property**  
**by Fraud.**

C. C. R.) A promise to do something in the future (*e.g.* a promise to pay for goods on delivery) is not a false pretence (*R v Hall* (1821), Russ & Ry. 463, *R v Burrows* (1889), 11 Cox, C C 258, C C R., *R v Woodman* (1879), 14 Cox, C C 179, *R v Johnston* (1842), 2 Mood C C 254) In *R v Douglas* (1836), 1 Mood C C 462, an indictment alleging as a false pretence that the defendant would tell the prosecutor where certain horses that had strayed were, if the prosecutor would give defendant a sovereign, was held to be bad, the indictment ought to have alleged as the false pretence that the defendant knew where the horses were, see *R v Lee* (1863), Le & Ca 309 (where it was held that a statement that the defendant "was going to pay" or "had got to pay his rent" was not a false pretence of an existing fact), compare *R v Henshaw* (1861), Le & Ca 444, *R v Johnston*, *supra*) But if a misrepresentation of an existing or past fact is accompanied by a promise, the promise does not prevent the misrepresentation from being a false pretence (*R v Fry* (1858), Deans & B 449, *R v West* (1858), Deans & B 576, *R v Bates* (1848), 3 Cox, C C 201, *R v Jennison* (1862), Le & Ca 157) A representation may be future in form, but may none the less be a representation as to an existing fact, *e.g.*, a statement that a cheque would be paid on presentation is a statement as to an existing fact and amounts to a representation that the cheque is a good one (*R v Hughes* (1838), 1 F & F 335, and see *R v Hazelton* (1874), L R 2 C C R 134 *R v Giles* (1865), Le & Ca 502) In *R v Gordon* (1889), 23 Q B D 374, C C R., it was held that a representation that "the defendant was prepared to pay to the prosecutor £100" was a false pretence of an existing fact, *sed quere*, see *R v Johnston* (1842), 2 Mood C C 254

(*d*) The following is the form of an indictment for false pretences "The Jurors for our lord the King upon their oath present that A B [on the — day of — in the year of Our Lord] unlawfully [knowingly and designedly] did falsely pretend to C D that he the said A B was then in the employ of E F by means of which said false pretences the said A B did then unlawfully obtain from the said C D money to the amount of £1 with intent to defraud whereas in truth and in fact the said A B was not then in the employ of the said E F as he the said A B at the time when he did so falsely pretend as aforesaid well knew" The words "knowingly and designedly" are not essential, an indictment without an allegation of knowledge that the pretences are false is cured by verdict (*R v Bowen* (1849), 13 Q B 790 *Quere* whether to allege that the defendant did *feloniously* pretend makes the indictment bad (*R v Walker* (1834), 6 C & P 607)

(*e*) *R v Musson* (1788) 2 Term Rep 561, *R v Oates* (1850), Deans C C 459, *R v Henshaw* (1861), Le & Ca 444, see *R v Airey* (1801), 2 East, 30 An indictment which omits to set out the particular false pretence alleged is bad, if the objection is taken before verdict, but if no such objection is taken and there is a verdict of guilty on such an indictment, the defect is cured by verdict (*R v Goldsmith* (1873), L R 2 C C R 74, see *Heymann v R* (1873), L R 8 Q B 102) It is not necessary to set out the false pretences in an indictment for a conspiracy to obtain by false pretences (*R v Gill* (1818), 2 B & Ald 204) or for receiving goods obtained by false pretences (*Taylor v R*, [1895] 1 Q B 25 An allegation that A and B made a certain false pretence is satisfactorily proved if it is shown that A and B were acting together in a fraudulent design, and that A, in the absence of B, made the alleged pretences (*R v Kerrigan* (1864), 9 Cox, C C 441, C C R., *R v. Moland* (1843), 2 Mood C C 276) As to false pretences by an agent, see *R v. Boyd* (1851), 5 Cox, C C 502, *R v Butcher* (1858), Bell, C C 6

(*f*) *R v Scott* (1832), 2 Russell on Crimes, 6th ed, 532 If the false pretence relates to a written instrument, the instrument must be sufficiently described, but it is not necessary to set out the instrument (*R v Coulson* (1800), 1 Den 592, *R v Brown* (1817), 2 Cox, C C 348, but see *R v Wickham* (1839), 10 Ad & El. 34)

## CRIMINAL LAW AND PROCEDURE.

### **SECT. 2** **Obtaining** **Property** **by Fraud.**

The false pretence must be proved as it is laid in the indictment, and if there is a substantial variance between the pretence laid and that proved, there can be no conviction (g).

The indictment must mention or describe the person to whom it is alleged that the defendant made a false pretence, and must name the person from whom the property was obtained by means of such false pretence (h). It must allege, and the evidence must

(g) *R v Fleslow* (1806), 1 Camp 494 (where the pretence laid was that the "defendant had paid" a sum of money into the Bank of England and the statement proved was that "the money had been paid at the bank", and the variance was held to be fatal), *R v Butcher* (1858), Bell, C C 6 (where the pretence alleged was that the defendant was sent by A B and C D to receive moneys payable to them and the pretence proved was a representation by a boy, an innocent agent of the defendant, that he (the boy) had authority to receive the moneys, and the conviction was quashed), *R v Bailey* (1852), 6 Cox, C C 29 (where the pretence laid was that the defendant had been to H on behalf of X Y, and had served a certain order of affiliation on S T, and the pretence proved was that the defendant had been with the order to H to serve S T, and had left it with S T's landlord, as S T was out, and it was held that the variance was fatal and that there was no power to amend the indictment under the Criminal Procedure Act, 1851 (1 & 2 Vict c 100), s 1, *R v Harri* (1841), 1 Cox, C C 101 (where the pretence laid was that certain horses belonged to a family named L that lived at S, and that Mr L was dead, and the pretence proved was that the family lived two miles from S, and that the elder member of the family was dead, and it was held that the variance was fatal) *L v Bulmer* (1861), Le & Ca 476 (where the pretence laid was that the defendant was the servant of a person named Hardman, and the pretence proved was that the defendant was the servant of a person named Harding, and the conviction was quashed, it seems that this was a case which could have been cured by amendment, but no application to amend appears to have been made (see 2 Russell on Crimes, 6th ed, 542). In *R v Bulmer* (1861), 3 F & F 101, the defendant was alleged to have pretended that a certain parcel contained all the letters written from the prosecutrix to the defendant, and it was held that this allegation was sufficiently proved, although it was shown that some of the letters had been destroyed by the prosecutrix. In *R v Kealey* (1851), 2 Don 63, the indictment alleged that certain false pretences were made to B and others, and it was shown that the pretences were made to B alone, and it was held that there was no variance. If the false pretence is contained in a written document, the document must be produced or its non-production accounted for, if it is proved to be lost, secondary evidence of its contents can be given (*R v Chadwick* (1833), 6 C & P 161). If a defendant orally made the pretences alleged in the indictment, evidence of such oral pretences can be given, although for the purpose of carrying out the fraud a deed was afterwards entered into and the deed alleged a consideration for parting with the money different from that contained in the oral pretences (*R v Adamson* (1843), 2 Mood C C 266).

(h) If there is no averment of any person to whom the false pretence was made and from whom the property was obtained, the indictment is bad (*R v Sawyer*, [1894] 2 Q. B 173, C C R). But it is sufficient to aver that the pretence was made to "the subjects of His Majesty the King" (*R v Sittenlock*, [1891] 2 Q. B 760, C C R). It is not necessary to allege or to prove that the pretence was made to the person from whom the property was obtained (*R v Brown* (1847), 2 Cox, C C 345, where *R v Tully* (1840), 9 C & P 227, was doubted, see also *R v Hunt* (1813), 1 Car & Kir 249). If the pretence is made to some other person than the one from whom the property is obtained, it must be proved that the pretence operated upon the mind of the person from whom the property was obtained (*R v Butcher*, *supra*, WILLIAMS, J, at p 19). As to a pretence made to a servant or agent, see *R v Douglass* (1808), 1 Camp 212. An allegation that property was obtained from the prosecutor is proved by evidence showing that it was obtained from his agent (*R v Moseley* (1861), Le & Ca 92). An allegation that a false pretence was made to A B (the secretary of a friendly society), and that by means of this false pretence money

## PART XIII.—OFFENCES AGAINST PROPERTY.

### SECT. 2. Obtaining Property by Fraud.

establish, that the defendant by means of the alleged false pretences, unlawfully obtained either a chattel, money, or valuable security, as the case may be (i), which must be sufficiently described (k), but it is not necessary to allege any ownership thereof (l).

It is not necessary to allege that the alleged false pretence was made with the intention of obtaining the property which was obtained, or to show how the false pretence was calculated to effect or had effected the obtaining of the property, or to state that there was no pretence besides the one or more charged, but the evidence must show that the false pretence was made for the purpose of obtaining the property etc. (m).

was obtained from A B, was held to be established by evidence that A B accompanied the defendant to C D (the treasurer of the society), who paid the money to the defendant (*R v Rouse* (1849), 4 Cox, C C 7).

(i) A chattel, to come within the statute, must be something which is the subject of larceny (Larceny Act, 1861 (24 & 25 Vict c 96), s 88). A dog is not a chattel which is the subject of larceny, and, it seems, is not a chattel within the statute as to false pretences (*R v Robinson* (1859), Bell, C C 34). The half of a bank note or a re-issuable note that has been satisfied may be properly described as a chattel (*R v Vyse* (1829), 1 Mood C C 218, *R v Mead* (1831), 4 C & P 535, see *R v Clarke* (1810), 2 Leach, 1036). A railway passenger ticket is a chattel within the statute, although it has to be delivered up at the end of the journey (*R v Boulton* (1819) 1 Den 508, and see *R v Becham* (1851), 5 Cox, C C 181, but see *R v Ashum* (1870), L R 1 C C R 261). It is not necessary that the chattel should be in existence at the time that the pretence is made, so long as the subsequent obtaining of the chattel is directly connected with the false pretence (*R v Martin* (1867), L R 1 C C R 56).

(k) In *R v Douglass* (1808), 1 Camp 212, it was held that a "basket of fish" might be described in an indictment as a "purcell." As to the description of money, see Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 18, p 340, ante. The expression "valuable security" includes any order, exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any funds of any body corporate, company or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and also includes any debenture, deed, bond, bill, note, warrant or order, or other security whatsoever, for money or for payment of money, whether of the United Kingdom, or of Great Britain or of Ireland, or of any foreign state, and any document of title to land or goods. The expression "document of title to land" includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title or any part of the title to any real estate, or to any interest in or out of any real estate (Larceny Act, 1861 (24 & 25 Vict c 96), s 1, see *R v Greenhalgh* (1854), Dears C C 267). A post-office money order is a valuable security within the meaning of the last-mentioned section (Post Office Act, 1808 (8 Edw 7, c 48), s 50).

(l) Larceny Act, 1861 (24 & 25 Vict c 96), s 88.

(m) *Hamilton v R* (1846), 9 Q B 271, *R v Brown* (1847), 2 Cox, C C 318, and see *R v Wukeling* (1823), Russ & Ry 504, where, on a pauper being told to go to work, the pauper falsely said he had no shoes, and thereupon the overseer gave him a pair, and it was held that the false statement was rather a false excuse for not working than a false pretence to obtain goods, and that the pauper could not be convicted of obtaining the shoes by false pretences (see also *R v Stone* (1858), 1 F & F 311). It is immaterial that the false pretence was not originally made for the purpose of obtaining the property in question, if the false pretence was persevered in or reiterated with that purpose (*R v Hamilton* (1845), 1 Cox, C C 244).

SMO. 2  
Obtaining  
Property  
by Fraud.  
—  
Obtaining

It is not necessary to allege the time when, or the place where, the pretence was made, or the chattel etc obtained (n)

**1383** The chattel, money, or valuable security must be obtained by the defendant, and obtained by means of the false pretences alleged (o) If the defendant with fraudulent intent causes the chattel etc to be delivered to anyone else than the defendant for the use or benefit or on account of the defendant or of any other person, the defendant is deemed to have "obtained" the chattel (p)

It is essential for the completion of the offence that there should have been an intention to deprive the owner wholly of the property in the chattel, therefore to obtain by false pretences the use of a chattel other than money, by way of loan for a limited time, is not an offence within the statute (q) But to obtain the loan of money is, it seems, to obtain money within the statute (r), and this is the case also with regard to the loan of a valuable security, except where there is an expectation that the identical security will be returned (s)

To obtain a gift of money etc by a false pretence (c g, by a false tale contained in a begging letter) is within the statute (t)

Although a false pretence may have been made and although property may have been obtained with a fraudulent intent, yet if the property was not obtained by means of the false pretence alleged in the indictment there can be no conviction (u)

(n) Criminal Procedure Act, 1851 (14 & 15 Vict c 100), ss 23, 24

(o) If the chattel etc is not actually obtained, but the defendant attempted to obtain it by false pretences, he can be convicted of the attempt (see *R v Burton*, [1900] 2 Q B 597, O C R)

(p) Larceny Act, 1861 (24 & 25 Vict c 96), s 89 This section in effect superseded the narrow interpretation given to the word "obtain" in *R v Garrett* (1853) 10EAR C C 232 (see 2 Russell on Crimes, 6th ed, 465) The section also meets such cases as *R v Martin* (1859), 1 F & F 501, and *R v Wavell* (1829), 1 Mood C O 224, where the charge was of obtaining credit in account by false pretences for which there was no provision under the earlier Acts, see also as to obtaining credit by fraud, title BANKRUPTCY AND INSOLVENCY, Vol II, p 350

(q) *R v Kilham* (1870), 1 R 1 C O R 261

(r) See *R v Burgon* (1856), Dears & B 11, per CLOMPTON, J, at p 20

(s) *Ibid*

(t) *R v Jones* (1850) 1 Den 551

(u) *R v Jones* (1884), 15 Cox, C C 475 C C R *R v Bulmer* (1864), 9 Cox, C C 492 C C R, *R v Dale* (1836), 7 C & P 352, *R v Dent* (1843), 1 Car & Kir 249 *R v Butcher* (1858) Bell, C C 6, *R v Hunt* (1861), 8 Cox, C O 493, *R v Cosnett* (1901), 20 Cox, C C 6, O C R

The pretences alleged and proved must not be too remote from the obtaining (see *R v Gardner* (1856), Dears & B 40, *R v Bryan* (1861), 2 F & F 567, but see also as to these two cases *R v Martin* (1867), 36 L J (M C) 20, C C R, at p 23, and *R v Burton* (1886), 16 Cox, C O 62, C C R). The false pretences may be made on several different occasions in different conversations or communications, if such conversations can be reasonably connected together (*R v Welfman* (1853), Dears C C 188) - As to a continuing false pretence, see *R v Greathead* (1879), 14 Cox, C O 108, O C R. If a person enters in a race in a false name and obtains a long start and wins the race he may be convicted of attempting to obtain the prize by false pretences (*R v Burton*, [1900] 2 Q B 597, C C R, following *R v Duckenson* (1879), Roscoe, Criminal Evidence, 13th ed, 408, and disapproving of *R v Lerner* (1880), 14 Cox, C O 497). The false pretence must be made before the property is obtained (*R v Brooks* (1859), 1 F & F 502, and see *R v Steels* (1867), 11 Cox, C O 5, O C R) If a Treasury

It is sufficient if part only of the alleged false pretence is proved, so long as what is proved operated on the mind of the prosecutor (b).

It is immaterial that in parting with the chattel etc. the prosecutor's mind was influenced by other circumstances as well as by the false pretence (c), or that the prosecutor had the means of finding out whether the pretence was true or not (d).

The indictment must allege, and the evidence must show, that the act of making a false pretence and obtaining property thereby was done with intent to defraud (e).

minute authorising the payment of money is obtained by means of a false pretence, and the money is paid, the money is obtained by the false pretence (*R v Cooke* (1858), 1 F & F 64). A misrepresentation of the state of accounts between a defendant and his partner in business, followed by the payment of money by the partner to the defendant, is not an obtaining of money by false pretences, as the partner still has rights over the money (*R v Evans* (1862), 1 E & Ca 252, and see *R v Crosby* (1843), 1 Cox, C C 10). If a person is induced by false and fraudulent allegations to enter into a partnership and to advance money, an indictment will lie (*R v Adamson* (1843), 2 Mood C C 286), but if the contract is not rescinded and money is advanced as part of the capital by the prosecutor, this is not an obtaining of money within the statute (*R v Watson* (1837), Deane & B 348 at p 362). If at the time when a chattel is obtained the prosecutor knew that the pretence was false, the defendant cannot be convicted of obtaining the chattel by false pretences (*R v Mills* (1857), Deane & B 205, but see *R v Ady* (1835), 7 C & P 110) but may be convicted of attempting to obtain (*R v Kuchuk* (1836), Deane & B 21, *R v Hensler* (1870), 11 Cox, C C 570, C C R). The fact that the prosecutor believed the false pretence may be proved by asking him in the witness box what opinion he formed as to the defendant's statement on its being made (*R v King* (1896), 66 L J (Q B) 87, C C R). As to the defendant obtaining a larger sum than he asks for, see *R v Smith* (1832), 2 Russell on Crimes, 520.

(b) *R v Lance* (1873), 12 Cox, C C 431 C C R, per BOVILL O J, at p 453. It is not necessary that all the pretences should be false, if any one of them is false and the mind of the prosecutor is operated upon by it, the offence is committed (*R v Ady* (1835) 7 C & P 140, per PATTERSON, J at p 141, *R v Perrott* (1814), 2 M & S 379, per BAYLY, J, at p 390, *L v Hill* (1811), Russ & Ry 190). But in *R v Wickham* (1839) 10 Ad & El 34, it was held that two pretences were so connected together in the indictment that they could not be separated, and as one false pretence was insufficiently alleged, the whole indictment was quashed, see also *R v Ward* (1814), 1 Cox, C C 101.

(c) *R v Ince*, *supra*, see *R v Hewgill* (1854), Deane C C 315, at p 322.

(d) See *R v Jessop* (1858) Deane & B 442, *R v Woolley* (1850), 1 Don 559, at p 564, *R v Wickham supra*, at p 37 (disapproving of *R v Jones* (1704), 2 Ld Raym 1013). "There are indeed cases where the pretence is so very foolish that it is difficult to say that an imposition is practised, but still, who is to give the measure?" (*R v Wickham, supra*).

(e) The allegation of the intent to defraud is essential, the omission of this allegation makes an indictment bad even after verdict, and is not amendable (*R v James* (1871), 12 Cox, C C 127). It is not necessary to allege or to prove an intent to defraud any particular person (Larceny Act, 1861 (24 & 25 Vict c 96), s 88). Proof of the falsity of the pretence and of the defendant's knowledge that it was false is *prima facie* evidence of an intent to defraud, but is not sufficient if the facts show that there was no such intent: thus in *R v Williams* (1836), 7 C & P 354, the defendant, by a pretence which he knew to be false, obtained certain goods from a person who owed and would not pay money to the defendant's master, and the defendant made the false pretence in order to secure to his master the means of enforcing payment of the debt, and COLLIERIE, J, directed the jury that, if they were satisfied that the defendant did the act only to put it in his master's power to compel the prosecutor to pay a just debt, they ought to acquit the defendant, and the defendant was accordingly acquitted. See also *R v Stime* (1858), 1 F & F 311. Unless the jury are



**SECT 2**  
**Obtaining**  
**Property**  
**by Fraud.**

**Negating**  
**the false**  
**pretence.**

**1384** The indictment must particularly negative the alleged false pretence. An indictment is insufficient if it merely alleges that the defendant falsely pretended that certain facts were true, it must go on to allege that the particular statements made were untrue (*f*)

The evidence must show that the alleged false pretences or some of them were untrue, and that those which were proved to be untrue affected the prosecutor's mind in parting with his property (*g*)

After negating the false pretences the indictment usually avers that the defendant at the time of making the false pretences knew that the pretences were false (*h*) It is not clear whether this averment is necessary, but it is necessary that the evidence should show that the defendant knew that the pretences he made were false (*i*)

satisfied that there was an intent to defraud on the part of the defendant, the charge fails (*R v Gray* (1891), 17 Cox, C C 299, C C R) If, however, the jury find that the defendant made a pretence which was false to his knowledge and that he made it to induce the prosecutor to part with goods, and that the prosecutor was induced to part with the goods by the false pretence, a finding by the jury that the defendant at the time he made the pretence and obtained the goods intended to pay the prosecutor for the price of them, when it should be in the defendant's power, does not negative the intention to defraud, and on such a finding the defendant should be convicted (*R v Naylor* (1865), 10 Cox, C C 119, C C R) Obtaining property by false pretences may be a crime, although the defendant does not intend ultimately to cheat the person from whom the property was obtained (*R v Hamilton* (1815), 1 Cox, C C 211, per POLLOCK, C B, at p 217, *R v Naylor, supra*) In order to prove an intent to defraud evidence may be given that the defendant, either before or after the acts charged against him, obtained or attempted to obtain property from the defendant or other persons by means of similar false pretences (*R v Robbuck* (1806), Dears & B 24, *R v Francis* (1874), 43 L J (M C) 97, C C R, not following *R v Holt* (1860), Bell, C C 280, *R v Cooper* (1875), 1 Q B D 19, C C R, *R v Rhodes*, [1899] 1 Q B 77, C C R, *R v Ollis*, [1900] 2 Q B 758, C C R, *R v Wyatt*, [1904] 1 K B 188, C C R)

(*f*) *R v Ferrott* (1811), 2 M & S 379, *R v Killeher* (1877), 14 Cox, C C 48, C C R (Ir) The insertion of the word "falsely" ("falsely pretended") is not essential if the false pretences are expressly negated (*R v Avey* (1801), 2 East, 30) The usual form for the negating of the false pretences commences with the words "whereas in truth and in fact" and goes on to state with particularity that each of the alleged pretences is not true (see Saunders, *Precedents of Indictments*, 3rd ed, 112) As to what is sufficient evidence to negative false pretences, see *R v Barousse* (1852), 5 Cox, C C 559, *R v Walker* (1811), 1 Cox, C C 99, *R v Winham* (1866), 10 Cox, C C 222, *R v Finch* (1908), 72 J P 102, C C R

(*g*) See p 695 *ante*

(*h*) See Saunders, *Precedents of Indictments*, 3rd ed, 110, 112—137 The usual form of the averment is "as he the said A B well knew at the time when he did so falsely pretend as aforesaid"

(*i*) In cases under stat (1757) 30 Geo 2, c 24, s 1, it was usual to aver that the defendant did "knowingly and designedly" falsely pretend, as those words were in the statute, see the forms of indictments, 2 Starkie, *Criminal Pleading*, 2nd ed, 496, 3 Chitty, *Criminal Law*, 1007 Those forms do not contain the words "as he the said A B well knew, etc," for the *scienter* had been already laid by the use of the words "knowingly and designedly" in the earlier part of the indictment The stat (1826) 7 & 8 Geo 4, c 29, s 53, omitted the words "knowingly and designedly" from the description of the offence. The forms of indictment under that statute do not contain the words "knowingly and designedly," and do not allege that the defendant knew that the pretences were false (Matthews, *Digest of the Criminal Law*, 1833 ed., p. 471) In *R v Henderson* (1811), 2 Mood C C 192 an indictment under the stat 7 Geo 4, c 29, s 53,



**SECT. 2.**  
**Obtaining**  
**Property**  
**by Fraud.**

**1385** In an indictment for false pretences several separate offences may be charged in separate counts (*h*). But if the defendant is embarrassed by the joinder of different counts, the prosecutor may be put to his election and compelled to proceed on one count alone (*l*).

Joining  
several  
charges in  
one indictment.  
Venue.

**1386** If the crime of obtaining by false pretences is begun in one county and completed in another, *e g*, if the false pretence is made in one county and the chattel etc is obtained in another county, the offence may be tried in either county (*m*)

If the offence is begun in one country and completed in another, it seems that the offence of obtaining can be tried in England only,

was held bad on demurrer, because it omitted to state that the defendant knew that the pretences were false, see also *R v Wickham* (1839), 8 L. J. (M. C.) 87, per Lord DENMAN, C. J., at p. 59, *Hamilton v R* (1846), 9 Q. B. 271, per PARTESON, J., at p. 278. The decision in *R v Henderson, supra*, was followed in *R v Philpotts* (1843), 1 Car. & Kir. 112, but was adversely criticised in *R v Bowen* (1845), 13 Q. B. 790, where an indictment which contained no express averment of the defendant's knowledge of the falsity of the pretences was held good after verdict by virtue of the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 21, in *R v Grubbs* (1845), 1 Cox, C. C. 249, it was held that an indictment without such an averment was good, although the objection was taken before verdict. It is submitted that a specific allegation of the defendant's knowledge of the falsity of the pretences is not essential (see *R v Mackarty* (1705), 2 Ld. Raym. 1179), that such knowledge is alleged by implication in the allegation of the intent to defraud. It seems clear that, even if the allegation is necessary, the omission of such an allegation is cured by verdict (*R v Bowen, supra*). The knowledge of the defendant that the alleged pretence is false must be established by evidence (*R v Bowen, supra*, at p. 793).

(*h*) *R v Young* (1789), 3 Term Rep. 98.

(*i*) *R v Hassell* (1813), 1 Cox, C. C. 51. As to joining a number of counts for false pretences in one indictment, see *R v King*, [1897] 1 Q. B. 214, O. C. R., per HAWKINS, J., at p. 216, and as to joining counts for false pretences in the counts for conspiracy, see *R v Stoddard* (1909), 25 T. L. R. 612, O. C. A.

(*m*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12, *R v Arington* (1893), 9 T. L. R. 199, C. C. R. But the offence cannot be tried in a county into which the defendant takes the property which he has obtained in another county (*R v Stanbury* (1862), Le. & Ca. 128). Before the Criminal Law Act, 1826 (7 Geo. 4, c. 64), the offence (under the stat. 30 Geo. 2, c. 24, s. 1) was only triable in the county where the chattel etc. was obtained (*R v Buttery*, cited *R v Burdett* (1820), 4 B. & Ald. 95, at p. 179). If money is obtained by false pretences, and is in consequence of the defendant's request put in a letter and posted in the county of A. and received by the defendant in the county of B., the defendant may, apart from the provisions of the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12, be tried either in the county of A. or in the county of B. (*R v Jones* (1850), 1 Den. 551, and see *R v Leech* (1856), Dears C. C. 642). In *R v Cooke* (1858), 1 F. & J. 64, where the defendant posted a letter containing a false pretence in Northampton and then obtained a Treasury minute, in consequence of which he obtained payment of money in Westminster, it was held that the defendant might be tried in Northamptonshire. The Criminal Law Act, 1826 (7 Geo. 4, c. 64), was not referred to in that case, but it seems that only by virtue of that Act can the decision be supported, unless the fact was, as it may very well have been, that the Treasury minute was obtained in Northampton, and therefore the money was obtained there, although it was paid in Westminster, but the case does not state where the minute was obtained, and the decision proceeds on the ground that the letter containing the false pretence was posted in Northampton. This case was referred to by DENMAN, J., in *R v Holmes* (1883), 12 Q. B. D. 23, O. C. R., but Lord COLERIDGE, C. J., there said that, although he did not intend to cast any doubt upon *R v Cooke*, his judgment was independent of it.

**SECT 2**  
**Obtaining**  
**Property**  
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if the property is obtained in England (n) If the false pretence is made in England and the property is obtained in another country and no part is obtained here, the offence is apparently not triable in England (o).

**SUB SECT 3 —Restitution**

Order of  
restitution  
of property  
obtained by  
false  
pretences

**1387** If a person is indicted for obtaining property by false pretences by or on behalf of the owner of the property or his executor or administrator and is convicted of the offence, the court before whom such person is tried for the offence may order restitution of the property mentioned in the indictment and produced and identified in court, or of the proceeds of such property (p)

A person who has obtained the property of another by false pretences acquires a voidable title to the property, the original owner from whom the property was so obtained on becoming aware of the fraud can repudiate the transaction by means of which the property was obtained, and if the property or its proceeds are still in the possession of the offender or his agent, or are in the hands of a donee from the offender, or of a purchaser for value who has notice of the fraud, the ownership reverts by virtue of such repudiation in the original owner

Such owner may sue for the recovery of the property or its proceeds, or, on the conviction of the offender for obtaining the property by false pretences, he may obtain from the court which tries the offence a summary order for the restitution of the property or its proceeds (a)

Not against  
bonâ fide  
purchaser

If before the repudiation the defrauder transfers the property for value to an innocent purchaser, such purchaser acquires a good title to the property A subsequent repudiation by the original

(n) See *R v Holmes* (1883), 12 Q B D 25, C C R *R v Ellis*, [1899] 1 Q B 230, 1 Q C R, compare *R v Peters* (1886), 16 Q B D 636, C C R, *R v Stoddart* (1909), 25 T L R 612, C C A

(o) Such a case would be governed by the common law rule as to venue (see p 261, ante, *R v Buttery* cited *R v Burdett* (1820) 1 B & Ald 45, at p 179, compare *R v Dawson* (1888), 16 Cox, C C 556, C C R) The only cases dealing with the point (*R v Holmes*, *R v Ellis*, *R v Peters*, supra) are all cases where the obtaining was in England In *R v Garrett* (1853), Dougl C C 232, a false pretence was made in Russia, and money was in consequence obtained in Russia, and a worthless security which affected to be payable in England was given by the defendant in Russia, and the person who received the security presented it in England, where it was dishonoured It was held (before the Larceny Act, 1861 (24 & 25 Vict c 96)) that the defendant could not be convicted of attempting to obtain money in England It seems that now, by virtue of the Larceny Act, 1861 (24 & 25 Vict c 96), s 89 (see p 696, ante), it would be held that in such a case there was an attempt to obtain in England

(p) Larceny Act, 1861 (24 & 25 Vict c 96), s 100, see p 684, ante, *R v Justices of Central Criminal Court* (1886), 18 Q B D 314 C A

(a) *R v George* (1901), 65 J P 729, see *Re Vautin Ex parte Saffery* (1899), 2 Q B 549, and Larceny Act, 1861 (24 & 25 Vict c 96), s 1, *R v Justices of Central Criminal Court*, supra There is a difference between stolen property and property obtained by false pretences Stolen property, if in the hands of the thief or his agent, or of a donee from him, or of a purchaser even for value, if the sale is not in market overt, and does not come within the Factors Act, 1889 (52 & 53 Vict c 45), s 9 (see p 686, ante), remains the property of the owner, and no repudiation or reversion is necessary Property obtained by fraud passes to the defrauder, who acquires a voidable title to it, and does not pass back to the original owner, until it is reversioned in him by repudiation of the transaction by which the property was obtained (see *R v George*, supra).

owner will not operate to reconstitute the title in the original owner, even though the defrauder is convicted of obtaining the property by false pretences, and no order for the restitution of the property can in such a case be made (b)

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SUB-SECT. 4—*Attempts to obtain by False Pretences*

**1388** An attempt to obtain property by false pretences is a common law misdemeanour

Attempt to  
obtain  
property by  
false  
pretences

The punishment is a fine or imprisonment without hard labour, with or without a fine (c)

**1389** If a defendant is indicted for obtaining property by false pretences and the evidence proves that the defendant made the alleged false pretences, that they were false, and that the defendant had an intent to defraud, but the evidence fails to prove that the defendant obtained the property or that the alleged false pretences led to the obtaining, the defendant may be convicted of the misdemeanour of the attempt to obtain by false pretences (d). On a defendant may in the first instance be tried on an indictment which charges him with attempting to obtain money etc. by false pretences with intent to defraud (e)

(b) *R v Willa* (1901), 65 J. P. 729, Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 23, 24 (2). S. 24 (2) of this Act has altered the law laid down in *Bentley v. Belmont* (1887), (12 App. Cas. 471, which decided that, when goods had been obtained by false pretences, and the property in them passed to an innocent purchaser from the defrauder, the title, by virtue of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100, reverted in the original owner on the conviction of the defrauder in the same way as stolen property to which a title had been acquired by a purchaser in market overt or otherwise reverted in the original owner on the conviction of the thief. The Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), only applies to personal chattels other than money, and does not apply to choses in action, while the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100, applies not only to money but also to valuable securities. As regards money there can be no reversion, if it has passed in currency to a person who receives it in good faith and for value, and if money has so passed in currency, no order for its restitution can be made under s. 100 of the Larceny Act, 1861 (24 & 25 Vict. c. 96) (see *Moss v Hancock* (1899), 2 Q. B. 111), nor can any order under that section be made as regards a valuable security which has been *bonâ fide* paid or discharged by the person or body corporate liable to pay it, or which, being a negotiable instrument, has been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration without any notice or reasonable cause to suspect that it had been stolen (Larceny Act, 1861 (24 & 25 Vict. c. 96) s. 100). *Quære* whether, if a valuable security which is not a negotiable instrument has been obtained by false pretences and has passed to an innocent purchaser for value without notice, and has not been paid or discharged as above, the property in such a security does not revert in the original owner on the conviction of the offender. As the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), does not apply to choses in action, it might be contended that to such a case *Bentley v. Belmont*, *supra*, still applies, but see *Attenborough, The Recovery of Stolen Goods* etc., 61.

(c) There is no limit at common law to the term of the imprisonment, see p. 410, *ante*. The offence is triable at quarter sessions.

(d) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9. See *R v. Roebuck* (1856), Dears. & B. 24, *R v. Hensler* (1870), 11 Cox, C. C. 570.

(e) See *R v. Riggby* (1858), 7 Cox, C. C. 507, *R v. Egleston* (1850), Dears. C. C. 515. The indictment should set out the false pretences and negative them, and should be in the same form as an indictment for the complete offence, except that the allegation of "did attempt to obtain" should be substituted for "did obtain" (*R v. Marsh* (1849), 1 Den. 505, and *R v. Hawley* (1848), 2 Cox, C. C. 464). See also *R v. Dunleavy* (1909), 73 J. P. 56, C. C. A.

**SECT. 2.**  
**Obtaining**  
**Property**  
**by Fraud.**

False state-  
ment by  
money-lender

The punishment for this offence is the same as for obtaining money etc by false pretences (*f*)

**1390** Any money-lender, or any manager, agent, or clerk of a money-lender, or a director, manager or officer of a corporation carrying on the business of a money-lender, is guilty of an indictable misdemeanour (*g*), who by any false, misleading or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is borrowed or is to be borrowed

The punishment is imprisonment with or without hard labour for a term not exceeding two years, or a fine not exceeding £500, or both (*h*)

**SUB-SECT. 5—Fraudulent Conveyances**

Conveyance  
of land to  
defraud  
creditors

**1391** Every feoffment, gift, grant, alienation, bargain, and conveyance of land, tenements, hereditaments, goods, and chattels, or any of them, or of any lease, rent, common or other profit or charge out of such lands etc, by writing or otherwise, and every bond, suit, judgment, and execution had or made with the intent to delay, hinder, or defraud creditors and others of their just debts is void as against the persons intended to be delayed, hindered, or defrauded (*i*)

All the parties to such a fraudulent conveyance etc who wittingly and willingly put in use, avow, maintain, justify, or defend the same as true, and had or made *bonâ fide* and upon good

(*f*) See p 691, *ante*

(*g*) Money-lenders Act, 1900 (63 & 64 Vict c 51), s 4 By money-lender is meant a person whose business is that of money lending, or who advertises or announces himself as carrying on that business, the Act does not apply to a pawnbroker in respect of business carried on by him in accordance with the provisions of the Act relating to pawnbrokers, or to a registered friendly society within the meaning of the Friendly Societies Act, 1896 (59 & 60 Vict c 25), or having rules certified under ss 2 or 4 of that Act, or under the Benefit Building Societies Act, 1836 (6 & 7 Will 4, c 32), or the Loan Societies Act, 1840 (3 & 4 Vict c 110), or under the Building Societies Act 1874 to 1894, or to any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act or to any person *bonâ fide* carrying on the business of banking or insurance, or *bonâ fide* carrying on any business not having for its primary object the lending of money, or to any body corporate for the time being exempted from registration under the Money-lenders Act, 1900, by order of the Board of Trade made and published pursuant to regulations of the Board of Trade As to who is a money lender, see *Newton v Pyke* (1908), 25 T L R 127 The Act is wider than the Larceny Act, 1861 (24 & 25 Vict c 96), s 90 (see p 703, *ante*), and includes the case of a false pretence of a future part or a promise to do something in the future An offence like that in *R v Gordon* (1889), 23 Q B D 354, C C R, might now be prosecuted under the Money-lenders Act, 1900 (63 & 64 Vict c 51)

(*h*) Money-lenders Act, 1900 (63 & 64 Vict c 51), s 4 See, generally, title **MONEY AND MONEY-LENDING**

(*i*) Stat. (1571) 13 Eliz c 5, ss 1 and 2, *Twyne's Case* (1601), 1 Smith, L C 11th ed., 1. For an instance of an indictment under the statute, see *R v Smith* (1852), 6 Cox, C C 31 It is not necessary to set out in the indictment the specific facts constituting the fraud, if the words of the statute are followed (*R v Smith*, *supra*). Communications between a client and a solicitor for the purpose of committing a fraud under the statute are not privileged from disclosure (*R v Cox* (1884) 15 Cox, C C 611, C C R.)

consideration, or who alien or assign any such lands etc. conveyed to them by such fraudulent conveyance etc., are by statute guilty of a misdemeanour (j)

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by Fraud.

The punishment for this offence is the forfeiture of one year's value of the lands conveyed, and the whole value of the goods and chattels, and the money to which any such fraudulent bond may relate, and imprisonment for half a year (j)

There are corresponding provisions as to conveyances etc. of lands, tenements, or other hereditaments with intent to defraud and deceive subsequent purchasers of such lands etc (k)

To defraud  
purchasers.

**1392** Any seller or mortgagor of land, or of any chattels real or personal, or choses in action, conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagee, is by statute guilty of an indictable misdemeanour (l) who, with intent to defraud, conceals any settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title does or may depend, in order to induce such purchaser or mortgagee to accept the title offered or produced to him

Fraudulent  
concealment  
by seller or  
mortgagor.

The punishment for this offence is a fine or imprisonment with or without hard labour for any term not exceeding two years, or both (n).

**1393** Any person concerned as principal or agent in proceedings before the registrar or the court under the Land Transfer Act, 1875 (n), is by statute guilty of an indictable misdemeanour (o) who, with intent to conceal the title or claim of any person, or to substantiate a false claim, suppresses, attempts to suppress, or is privy to the suppression of any document or fact

Fraudulent  
suppression  
of documents  
etc in  
proceedings  
under Land  
Transfer Act,  
1875

Everyone is by statute guilty of an indictable misdemeanour (p) who fraudulently procures, fraudulently attempts to procure, or is privy to the fraudulent procurement of any entry on the register under the Land Transfer Act, 1875 (q), or any erasure from or alteration of such register

Fraudulent  
entry on  
register  
under Land  
Transfer Act,  
1875

The punishment for each of the two last-named misdemeanours is imprisonment for a term not exceeding two years with or without hard labour, or a fine not exceeding £500 (r)

(j) See note (i), p. 704, *ante*

(k) Stat (1884) 27 Eliz c. 4, ss 1, 2, *Twyne's Case* (1601), 1 Smith, L. C., 11th ed., 1. See Voluntary Conveyances Act, 1893 (56 & 57 Vict c. 21). These offences are, it seems, triable at quarter sessions

(l) Law of Property Amendment Act, 1859 (22 & 23 Vict c. 35), s. 24, Law of Property Amendment Act, 1860 (23 & 24 Vict c. 38), s. 8

(n) Law of Property Amendment Act, 1859 (22 & 23 Vict c. 35), s. 24. No prosecution for any offence in this section is to be commenced without the sanction of the Attorney-General or of the Solicitor-General, if the office of Attorney-General is vacant, such sanction is not to be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney-General or Solicitor-General may direct (*ibid*). The offence is, it seems, triable at quarter sessions.

(n) 38 & 39 Vict. c. 87

(o) *Ibid*, s. 95

(p) *Ibid*, s. 100

(q) 38 & 39 Vict c. 89

(r) *Ibid*, ss 99, 100

## SECT 2

SUB-SECT 6—*Personation***Obtaining  
Property  
by Fraud**

**1394** To personate another with a fraudulent purpose is an indictable misdemeanour at common law, if it amounts to a common law cheat (*s*)

**Personation**

Many cases of fraudulent personation are now statutory offences (*t*)

**Personation  
of share  
holders etc**

**1395.** It is by statute (*a*) a felony falsely and deceitfully to personate any owner of any share or interest of or in any stock, annuity, or other public fund transferable at the Bank of England or the Bank of Ireland, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society established by charter or by Act of Parliament, or any owner of any dividend or money payable in respect of such share or interest, if the offender by such personation transfers or endeavours to transfer any share or interest belonging to such owner, or by such personation receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner

The punishment is penal servitude for life or for any term not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*b*)

**Personation  
of stock  
holder**

**1396** It is by statute (*c*) a felony falsely and deceitfully to personate any owner of any share or interest of or in any India stock, or in any stock as defined in the National Debt Act, 1870 (*d*), or any stock certificate or coupon issued in pursuance of the India Stock Certificate Act, 1863 (*e*), or of Part V of the National Debt Act, 1870 (*f*), and thereby to obtain or endeavour to obtain any such stock certificate or coupon, or to receive or endeavour to receive any money due to any such owner, as if the offender were the true and lawful owner

This offence is punishable in the same way as the last-mentioned felony (*g*)

(*s*) *I.e.*, if the offence may affect the public interest, as by false personation to defeat the administration of justice or if there is a conspiracy, and see p 689, *ante*, 2 East, P C 1010. Many of the cases of personation in the books are cases of conspiracy to defraud, see *R v Hiley* (1782), 2 East, P C 1010, *R v Robinson* (1746), 1 Leach, 37, *R v Mackarty* (1700), 2 Ld Raym 1179, 3 Ld Raym 320, see 2 East, P C 824, 2 Burr 1129. The offence is triable at quarter sessions

(*t*) As to personation at elections, see title ELECTIONS

(*a*) Forgery Act 1861 (24 & 25 Vict c 98), s 3, see Local Loans Act, 1875 (38 & 39 Vict c 83), s 32, Colonial Stock Act, 1877 (40 & 41 Vict c 39), s 21, Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict c 102), s 19, and see Local Government Act, 1888 (51 & 52 Vict c 41), s 10

(*b*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions

(*c*) Forgery Act, 1870 (33 & 34 Vict c 58), s 4, India Stock Certificate Act, 1863 (26 & 27 Vict c 73), s 14

(*d*) 33 & 34 Vict c 71, see s 3, and First Schedule

(*e*) 26 & 27 Vict c 73

(*f*) 33 & 34 Vict c 71

(*g*) Forgery Act, 1870 (33 & 34 Vict c 58), s 4, India Stock Certificate Act, 1863 (26 & 27 Vict c 73) s 14, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions

**1397** It is by statute (*h*) a felony to personate any owner of any share or interest in any company established under the Companies (Consolidation) Act, 1908 (*i*), or of any share, warrant, or coupon issued under that Act.

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This offence is punishable in the same way as the last-mentioned felony (*k*).

**1398** It is by statute (*l*) a felony falsely and deceitfully to personate any person, or the heir, executor, or administrator, wife, widow, next of kin, or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property.

Personation  
to obtain  
land etc.

This offence is punishable in the same way as the last-mentioned felony (*m*).

**1399** It is by statute (*n*) a felony for anyone wittingly and knowingly to personate or falsely assume the name or character, or procure any other so to personate or falsely assume the name or character, of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, grant, or other allowance of money, prize money or relief, due or supposed to be due or payable, for or on account of any service done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person in the King's army or other military service, or to personate or falsely assume the name or character of the executor or administrator, wife, relation, or creditor of any such officer etc., in order fraudulently to receive any such pension etc.

Personation  
to obtain  
army pension  
etc.

(*h*) 8 Edw 7, c 69, s 38 (1) (*u*)

(*i*) *Ibid*

(*k*) Companies (Consolidation) Act, 1908 (8 Edw 7, c 69), s 38 (*u*), Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1.

(*l*) False Personation Act, 1874 (37 & 38 Vict c 36), s 1. Nothing in the Act is to prevent a person from being proceeded against and punished under any other Act or at common law for an offence punishable as well under the Act as under any other Act or at common law. As to an offence under this Act in relation to any military pay etc., see Army Act, 1881 (44 & 45 Vict c 58), s 142 (3).

(*m*) False Personation Act, 1874 (37 & 38 Vict c 36), s 1, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions.

(*n*) Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo 4, c 16), s 38, there are almost identical provisions in the Army Prize Money Act, 1832 (2 & 3 Will 4, c 53), as to anyone personating etc any officer etc entitled etc to any "prize money, grant, bounty money, share, or other allowance of money" due etc for or on account of any service performed etc by any officer etc "who shall have really served or be supposed to have really served" in the King's army or "in any other military service," or as to personating or acting, aiding or assisting in personating etc "the executor, administrator, wife, widow, next of kin, relation or creditor" of any such officer etc, in order to receive or enable any other person to receive "any such prize money etc," see also Army Act, 1881 (44 & 45 Vict c 58), s 142 (2), (3). If A believe B to be C, and at B's request assumes the character of C for the purpose of receiving a share of prize money etc, A commits an offence under the Act (*R v Lake* (1869), 11 Cox, C C 333). The offence of personating someone for the purpose of obtaining payment of a part of a pension is committed even although the pension is no longer in existence (*R v Pringle* (1849), 9 C & P 408), but there must be a person who was in the service of the King etc and whose name and character were assumed, and see p 708, *post*.

**SECT. 3**  
**Obtaining**  
**Property**  
**by Fraud.**  
 —  
 Personation  
 of naval  
 pensioner etc

This offence is punishable in the same way as the last-mentioned felony (o).

**1400** It is an indictable misdemeanour (p) falsely and deceitfully to personate any person entitled or supposed to be entitled to receive any pay, wages, allotment, prize money, bounty money, grant, or other allowance of the same nature, half-pay, pension, or allowance from the Compassionate Fund of the navy, payable or supposed to be payable by the Admiralty, or any other money so payable or supposed to be payable, or any effects or money in charge or supposed to be in charge of the Admiralty, in order to receive such pay etc

The punishment for this offence in the case of conviction on indictment is penal servitude for not more than five or for not less than three years, or imprisonment for a term not exceeding two years with or without hard labour (q)

There are other cases of personation which are punishable only on summary conviction (r)

#### SUB-SECT 7—*Conspiracy to Defraud*

**Conspiracy**

**1401** If two or more persons conspire together to cheat or defraud another or others, the confederates commit an indictable common law misdemeanour, whether the act which they agree to do is or is not of itself criminal

The punishment for this offence is fine and imprisonment with or without hard labour (s)

(o) Chelston and Kilmunham Hospitals Act, 1826 (7 Geo 4, c 16), s 35, Penal Servitude Act, 1857 (20 & 21 Vict c 3), s 2, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions

(p) Admiralty Powers etc Act, 1865 (28 & 29 Vict c 124), s 8, see Naval Pensions Act, 1854 (47 & 48 Vict c 41), s 2 The offence is committed even though the person whose name or character is assumed is dead (*R v Martin* (1817), Russ & Ry 321, *R v Cramp* (1817), Russ & Ry 327) But the offence is not committed unless the person whose name or character is assumed was or was supposed to be entitled to the pay etc which it is sought to obtain (*R v Brown*, *R v M'Annally* (1800), 2 East, P C 1009) In *R v Tannet* (1818), Russ & Ry 351, a man was indicted for personating one Peter McCann, a person entitled to prize money on board of the ship *Tremendous*, a person named Peter McCann was entitled to prize money in respect of services on that ship, but there was no person of the name of Peter McCann, the jury found that the prisoner meant to personate Peter McCann, but the conviction was held by all the judges to be wrong, they were of opinion that the "personating" must apply to some person who had belonged to the ship, and that the indictment must charge the personating of that person The principle of the decision is still, it seems, applicable, although the particular defect in the case could now be remedied by amending the indictment, see p 344, *ante* A person who aids and abets another in personating someone else is guilty of an offence under the statute (*R v Potts* (1818), Russ & Ry 353)

(q) Admiralty Powers etc Act, 1865 (28 & 29 Vict c 124), s 8, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is also punishable on summary conviction, see Admiralty Powers etc Act, 1865 (28 & 29 Vict c 124) The offence is triable at quarter sessions

(r) The offence is only triable at quarter sessions if the conspiracy is to commit a crime triable at quarter sessions (Quarter Sessions Act, 1812 (5 & 6 Vict c 38), s 1)

(s) See Inland Revenue Regulation Act, 1890 (53 & 54 Vict c 21), s 12, Army Act, 1881 (44 & 45 Vict c 58), s 142



An agreement made with a fraudulent mind to do that which, if done, would give to the prosecutor a right of action founded on fraud is a criminal conspiracy (t)

As the essence of the crime of conspiracy to defraud is the agreement of two or more persons to defraud someone else, it is unnecessary in an indictment for such a conspiracy to specify the particular means and devices by which the defendants conspired to defraud, or any overt act committed in justification of the agreement (u)

SECT. 2.  
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by Fraud.

Indictment.

(t) *R v Aspinall* (1876), 2 Q. B. D. 48, O. A., per BRETT, J. A., at p. 59, *R v Hovey* (1782), 2 East, P. O. 856, *R v Warburton* (1870), L. R. 1 O. O. R. 274. Agreements to do the following things are instances of conspiracies to defraud.—To raise the price of the public funds on a particular day by false rumours (*R v De Berenger* (1814), 3 M. & S. 67), to procure by false statements a quotation of the shares of a company on the official list of the Stock Exchange in order to give a fictitious value to such shares (*R v Aspinall* (1876), 2 Q. B. D. 48, O. A.), to induce a false belief among investors that there is a bona fide market for certain shares (*Scott v Brown, Dering, McAdams & Co.*, [1892] 2 Q. B. 721, O. A.), to purchase shares in a company in order to induce persons to take shares in a new company which was to take over the business of an old company which the conspirators knew was hopelessly insolvent (*R v Gurney* (1869), 11 Cox, C. C. 414), to represent a bank and its affairs to be in a sound and prosperous condition when it is really insolvent (*R v Esdaile* (1858), 1 F. & F. 213), to make and publish a false balance-sheet misrepresenting the financial condition of a company (*R v Burch* (1866), 4 F. & F. 407), to fabricate false shares in a company in addition to the number prescribed by the rules and to sell them as good shares (*R v Mott* (1827), 2 C. & P. 221), to deprive a partner of his interest in some of the partnership property by false entries and false documents (*R v Warburton* (1870), L. R. 1 O. O. R. 274), to make false representations so as to enforce by means of legal process the payment of sums of money known not to be due (*R v Taylor* (1883), 15 Cox, C. C. 265, 266), to defraud an execution creditor of the fruits of a judgment by falsely ante-dating a deed relating to the property of the judgment debtor (*R v Cor* (1854), 14 Q. B. D. 153, C. C. R.), knowingly to make false representations as to the solvency of a purchaser of goods on credit and thus to enable the purchaser to get goods on credit when it is known that he does not intend to pay for them (*R v Orman* (1880), 14 Cox, C. C. 381), to cause indigent persons to be reputed and believed to be persons of considerable credit for the purpose of defrauding tradesmen (*R v Whitehouse* (1852), 6 Cox, C. C. 38, *R v Roberts* (1808), 1 Camp 399), to dispose of goods in contemplation of bankruptcy in order to defraud the creditor of the person to whom the goods belong (*Heymann v R* (1873), L. R. 8 Q. B. 102, *R v Hull* (1858), 1 F. & F. 33), to cause goods at an auction to be sold at a price far below their real value with intent to divide between the conspirators the difference between the auction price and the fair price (*Levi v Levi* (1833), 6 C. & P. 239), to hold a sham auction with sham bidders for the purpose of selling goods at prices grossly above the real value (*R v Lewis* (1869), 11 Cox, C. C. 404, where *R v Lewis* (1867), 10 Cox, C. C. 374, was commented upon and distinguished), to defraud a railway company by obtaining excursion tickets which were not transferable and selling them to other persons to be used by them (*R v Abolton* (1859), 1 F. & F. 498), to make false and fraudulent representations as to the soundness of a horse which the owners had agreed to sell and so to induce him to accept a less price than that at which he had agreed to sell the horse for (*R v Carlisle* (1851), Dears C. C. 337), falsely and fraudulently to represent that a horse is the property of a private person and not of a horse-dealer and thus to induce a person to buy it (*R v Kenrick* (1843), 5 Q. B. 49), to obtain money from another person by false pretences with intent to defraud (*R v Gull* (1818), 2 B. & Ald. 204)

(u) *R v Kinnarsley* (1719), 1 Stra. 193, *R v Gull* (1818), 2 B. & Ald. 204, *R v Kenrick* (1843), 5 Q. B. 49, *Sydsæff v R* (1847), 11 Q. B. 245, Ex. Ch. An indictment is sufficient which alleges that A. and B. "unlawfully conspired by false pretences and subtle means and devices to obtain from C. divers large sums of

**SECT 2**  
**Obtaining**  
**Property**  
**by Fraud.**

In conspiracy the unlawful agreement is of itself a sufficient overt act (1) But in a prosecution for conspiracy, unless there is direct proof of the unlawful agreement, the evidence must, in order to establish the agreement, show an overt act done in pursuance of the alleged agreement, evidence of such an act is always desirable, even when it is not necessary

**Evidence.**

An overt act done by one of the conspirators in furtherance of the agreement will be evidence against all, if the agreement is established by other evidence (y)

**SUB-SECT 8—Prevention of Corruption Act, 1906**

**Corrupt**  
**transactions**  
**with agents**

**1402** By statute (a) (1) if any agent corruptly accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forbore to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation thereto, or (2) if any person corruptly gives, or agrees to give, or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do any such act or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, or (3) if any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he commits a misdemeanour and is liable to imprisonment with or without hard labour for two years or to a fine not exceeding £500, or to both

**SECT 3—Offences against the Bankruptcy Acts**

**Offence by**  
**bankrupt**

**1403** A number of offences on the part of a bankrupt, or by a person against whom a receiving order has been made, have also been created by statute (b)

money with intent to defraud,' although if the indictment had been against one person it would have been necessary to set out the false pretences (*R v Gill, supra*, *R v Kenrick, supra*, see p 694, *ante*). Merely to allege that A and B unlawfully fraudulently, and deceitfully did conspire, combine, confederate and agree together to cheat and defraud C of his goods and chattels is sufficient (*Sydneyff v R, supra*). But see *R v Richardson* (1834) 1 Mood & R 402, *R v Fowle* (1831), 4 C. & P 592. It is, it seems, necessary to allege an intent to defraud someone, but an allegation of an intent to defraud the public is sufficient (*R v De Berenger* (1814) 3 M. & S 67, *R v Gurney* (1869), 11 Cox, C. C 414 *ante* p 440, but see *Hunt v R* (1876), 13 Cox, C. C 318), and 1 Russell on Crimes, 6th ed., 19 (u).

(x) *Mulcahy v R* (1868), L. R 3 H. L. 306

(y) *R v Diamond* (1868), 11 Cox, C. C 146

(a) Prevention of Corruption Act, 1906 (6 Edw 7, c 31). These offences are not triable at quarter sessions (*ibid* s 2 (j)). The consent of the Attorney or Solicitor General to the prosecution must be obtained (*ibid*, s 2 (1)).

(b) For a full treatment of these offences, see title BANKRUPTCY AND INSOLVENCY, Vol II, pp 345—351. As to obtaining credit by fraud, see *ibid*, and *R v Murhead* (1908, 73 J. P. 31, C. C. A. These offences are triable at quarter sessions.

SECT 4—*Forgery.*SECT 4  
*Forgery.*SUB-SECT 1—*Forgery at Common Law*

**1404** Forgery is the fraudulent making of a written instrument which purports to be that which it is not (c). It is indictable as a misdemeanour at common law, and the forgery of certain instruments and certain acts relating to or preparatory to forgery have been made statutory offences (d).

Definition of  
forgery

Forgery must be of some document or writing (e). The

(c) *Ex parte Windsor* (1865), 10 Cox, C C 118 at pp 123, 124, *R v Ritson* (1869), L R 1 C C R 200, at pp 203, 204. For other definitions, see *A v Parkes* (1796) 2 Leach, 770, at p 755; *R v Jones* (1785), 1 Leach, 366, 367, *R v Fpps* (1864), 4 F & F 81 per WILLES, J., at p 86, 2 East, P C 802, 4 Bl Com 245, 4 Com Dig tit Forgery, A, 1, 1 Hawk P C, c 70, s 2 ("the notion of forgery doth not so much consist in the counterfeiting of a man's hand and seal but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another which he is in no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done and by force of such a falsity to give it an operation which in truth and justice it ought not to have"), *Lomlin, Law Dictionary, tit Forgery*. Every fraudulent alteration of a true instrument is a forgery of the whole instrument (*R v Teague* (1802), 2 East, P C 979) so the forgery of a signature to a document may amount to the forgery of the entire document (*R v Lutry* (1807), Dears & B 294). As to uttering a forged instrument, see p 714, *post*.

(d) See p 715, *post*. These statutes contain no definition of forgery, and in them forgery has the same meaning as forgery at common law (see *R v Ritson* (1869), L R 1 C C R 200, at pp 204, 205).

(e) It is not forgery fraudulently to insert the signature of a painter in a picture, even when the picture is not painted by him (*R v Cross* (1858), Dears & B 460, 466). Such an act is however made punishable in certain cases by the Fine Art Copyright Act, 1862 (25 & 26 Vict c 68) s 7 (see title COPYRIGHT, Vol VIII, p 199). If a tradesman or manufacturer for the purpose of passing off his goods as those of another tradesman or manufacturer imitates the printed wrappers used by the other tradesman or manufacturer, and sells his goods in such wrappers, this is not forgery (*R v Smith* (1868) Dears & B 666). Such an offence is, however, punishable under the Merchandise Mark Act, 1887 (50 & 51 Vict c 28), ss 2, 5 (see title TRADE MARKS AND DESIGNS). It is forgery at common law to make a false certificate of character (*R v Tushack* (1819), 1 Den 492, *R v Shurman* (1811), Dears C C 285, *R v Moah* (1878), 7 Cox, C C 503 C C R, but see *R v Hodgson* (1856), 7 Cox, C C 122, C C R). There are also statutory provisions as to the giving or using of false characters, see Servants' Characters Act 1792 (32 Geo 3 c 56), s 4, Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 104. Seamen's and Soldiers' false Characters Act, 1906 (6 Edw 7, c 5), ss 1, 2. It is forgery at common law fraudulently to fill up a county court summons or to alter a *distringas* into a summons (*R v Collier* (1831), 5 C & P 160) to put a seal to a document which is invalid without a seal (*R v Collins* (1844), 1 Cox, C C 57), to alter the entries made by donors on a list of subscriptions (*R v Hamilton*, [1901] 1 K B 740, C C R), to forge a certificate of ordination or an entry in a register of ordinations (*R v Etheridge* (1901) 19 Cox, C C 676, 678, n, and see *Slader v Smallbrooke* (1864), 1 Lev 138) to forge a railway pass (*R v Boulton* (1818), 2 Car & Kir 604), or to forge an order from a magistrate to discharge a prisoner (*R v Harris* (1831), 1 Mood C C 39; see *R v Fairrett* (1793), 2 East, P C 862), a bill of lading (*R v Stocker* (1695), 5 Mod Rep 137), an acquittance (*R v Ferrers* (1666), 1 Sid 278), a receipt (*R v Ward* (1727), 2 Stra 747), a warrant of attorney (*Furr's Case* (1663), T Raym. 81), a marriage register (*Dudley's Case* (1658), 2 Sid 71), a bill of exchange (*R v Sheldon* (1680), cited 2 Stra 718), a promissory note (*R v Hales* (1728), 17 State Tr 162), letters of credence to collect money (*Savage's Case* (1647), Sty 12), a consent to act as next friend in a suit (*R v Smythes* (1849) 1 Den 498). It is not forgery to make an entry in a

**NOTE 4**  
**Forgery.**

instrument or some part of it must be false in some material respect (f)

book of accounts containing a false statement (*Ex parte Windsor* (1865), 10 Cox, O O 118, at p 121, but see *Re Arton* (No 2), [1896] 1 Q B 609, at p 515) But this is a statutory offence in certain cases (see Falsification of Accounts Act, 1876 (38 & 39 Vict c 24), s 1; Larceny Act, 1861 (24 & 25 Vict c 96), s 83) It is not forgery to fill in voting papers with the names and marks of voters who are marksmen (*R v Hartshorn* (1853), 6 Cox, O C 395, but see now *Blake v Allen* (1600), Moore (K B), 619, *R v Combes* (1605), Moore (K B), 759, *R v Elsworth* (1780), 2 East, P O 986, *R v Kinder* (1800), 2 East, P O 855, *R v Atkinson* (1837), 7 O & P 669; *R v Treble* (1810), 2 Taunt 328, 1 Ex Ch, *R v Post* (1806), Russ & Ry 101)

(f) *R v Berkett* (1813), Russ & Ry 251, *R v Griffiths* (1858), Dears & B 548, *R v Hart* (1817), 1 Mood O O 486, *Flower v Shaw* (1848), 2 Car & Kir 703 It is forgery to make a deed fraudulently with a false date, when the date is material, although the deed is in fact made and executed by and between the persons by and between whom it purports to be made and executed (*R v Ritten* (1865), L R 1 C O R 200, see *R v Lewis* (1754), Fost 116) It is forgery to alter the name of a banker at whose bank a note is payable and substitute the name of another banker (*R v Treble* (1810), 2 Taunt 328, Ex Ch) An instrument is a false instrument if it contains the signature of the defendant in his own name, if such signature is intended by the defendant to pass as that of another person, whether there be such another person in existence or not, so of an instrument signed by another person with the defendant's authority in such other person's real name, but with the intent that the signature should pass as that of a third person, whether existing or non existing (*R v Parke* (1796), 2 Leach, 776, and see 2 East, P O 957, *Mead v Young* (1790), 4 Term Rep 28, *R v Lewis* (1754), Fost 116, *R v Hadfield* (1803), Evans Collection of Statutes, Vol VI, 91, Part V, ch xii, p 380, *R v Rogers* (1838), 8 O & P 629, *R v Mitchell* (1844) 1 Don 282, *R v Jenkinsop* (1847), 2 Car & Kir 531, *R v Epps* (1864), 4 F & F 81, *R v Nisbett* (1853), 6 Cox, O C 320, *R v Mahony* (1854), 6 Cox, O C 487, C C R (Ir), but see *R v Webb* (1819), Russ & Ry 405) Thus to write the acceptance of an existing person or persons to a bill of exchange without authority or the name of a non-existing person or persons in acceptance of a bill is forgery, if a person writes an acceptance in his own name to represent a fictitious person or persons with intent to defraud he commits forgery (*R v Rogers, supra*, and see *R v Wilks* (1767) 2 East, P O 957, *R v Bolland* (1772), 2 East, P O 958, *R v Lockett* (1772), 2 East, P O 910, *R v Taft* (1777), 2 East P O 959, *R v Taylor* (1779), 2 East, P O 960, *R v Wardell* (1862), 3 F & F 82) But if a person gives a note or other written instrument as his own his subscribing it by a fictitious name will not make it a forgery, if credit is wholly given to himself, without any regard to the name or any relation to a third person (*R v Martin* (1879) 5 Q B D 34, C C R, *R v Dunn* (1765), 1 Leach, 57, and see *R v Bontien* (1813), Russ & Ry 260), *aliter* if the fictitious name is assumed for the purpose of carrying out the particular fraud with which the defendant is charged (see *R v Sheppard* (1781), 1 Leach, 226, *R v Achilles* (1787), 2 East P O 968, *R v Whaley* (1805), Russ & Ry 90, *R v Peacock* (1814), Russ & Ry 278, *R v Whyte* (1851), 5 Cox O C, 290, *R v Francis* (1811), Russ & Ry 209, *R v Bontien* (1813), Russ & Ry 260) If D represents himself to be E and signs E's name and thereby obtains payment of money due to E from F, who would not have paid the money unless he had believed that D was E, D is guilty of forgery (*R v Dunn, supra*, and see *R v Parke* (1843), 1 Cox, O C 4) It is not forgery for a person falsely to represent himself to be someone else who has actually signed an instrument (*R v Hevey* (1732), 2 East, P O 856) It is not forgery to procure a person's signature to a document, the contents of which have been altered without such person's knowledge (*R v Chadwick* (1844), 2 Mood & R. 545, and see *R v Collins* (1841), 2 Mood & R 461, at p 466) But it is forgery to make a false copy of a document for the purpose of using it as evidence of the contents of an original alleged to be lost (*Upfold v. Leat* (1801), 5 Esp 103) If a blank cheque is given to a person with a limited authority to complete it and he inserts an amount different from that which he has authority to insert, or if he completes it when his authority has been determined, he is guilty of forgery

SECT. 4.  
Forgery.Resemblance  
to genuine  
document.

**1405** To constitute the crime of forgery it is not essential that the forged instrument should be so made that, if it were in truth what it purports to be, it would be valid; but the false instrument must carry on the face of it the semblance of a valid instrument, and must not be obviously an illegal document (g)

It is not necessary that the resemblance to a genuine instrument should be exact, it is sufficient if the false instrument is so like as to be calculated to deceive persons who on ordinary observation, although persons having special experience as regards such instruments, would not be deceived (h).

**1406** An intent to defraud is a necessary ingredient of the crime of forgery (i). It is not necessary that anyone should be actually injured (h) Intent.

(*R v Bateman* (1843), 1 Cox, C C 186, *R v Wilson* (1847), 2 Car & Kir 527) If a person has a general authority to draw cheques, he cannot be convicted of forgery in drawing a cheque which he misappropriates (*R v Richardson* (1860), 2 F & F 343) If a person draws a cheque or accepts a bill of exchange or signs any other document in the name of another, it is forgery, unless the person drawing or accepting had authority from the other person or *bona fide* believed that he had authority (*R v Forbes* (1835), 7 O & P 224, *R v Beard* (1837), 8 C & P 143, *R v Parish* (1837), 8 O & P 94, *R v Bardsall* (1839) 1 F & F 529, see *R v Smith* (1862), 3 F & F 504, *R v Clifford* (1845), 2 Car & Kir 202, *R v Ineson* (1833), 2 Lew O O 178 It is not forgery at common law for a person fraudulently to sign his own name to a bill *per procuracionem* (*R v White* (1847), 1 Den 208), but such an act is now punishable as a statutory offence, see pp 720, 727, *post*

(g) 2 East, P C 948, *R v Deakins* (1674), 1 Sid 142, *R v Crooke* (1731), 2 East, P C 921, *R v Goate* (1700), 1 Ld Raym 737, *R v Murphy* (1758), 19 State Tr 693, *R v Sterling* (1773), 2 East, P C 950, *R v Cougan* (1787), 1 Leach, 449, *R v Lyon* (1813), Russ & Ry 253, *R v Burke* (1822), Russ & Ry 496, *R v Pike* (1838), 2 Mood C O 70, *R v Taylor* (1843), 1 Car & Kir 213, see *R v Butterwick* (1839), 2 Mood & R 196, *R v Cooke* (1838), 8 O & P 582, *R v Hicks* (1809), Russ & Ry 149 Forgery can be committed of an instrument on unstamped paper or paper insufficiently stamped, although payment of such an instrument could not be enforced by action (*R v Hawkeswood* (1783), 1 Leach, 257, *R v Lee* (1781), 1 Leach, 258, n (a), *R v Morton* (1795), 1 Leach, 258, n (b), *R v Revulet* (1795), 2 Leach, 703, *R v Teague* (1802), 2 East, P C 979, *R v Pike* (1838), 2 Mood C O 70, at p 75) If the false instrument is void on the face of it, the person who makes it does not, it seems, commit forgery (*R v Hall* (1800), 2 East, P C 953, *R v Moffatt* (1787), 2 East, 954, *R v Jones* (1779) 1 Doug (K B) 300, *R v Reading* (1793), 2 Leach, 590, *R v Pateman* (1821), Russ & Ry 455, *R v Bartlett* (1841), 2 Mood & R 362, *R v Moffatt* (1787), 1 Leach, 431, *R v Donnelly* (1836), 1 Mood C O 438, but see *R v Reed* (1838), 2 Mood C O 62, at p 66, and compare *R v Harper* (1881), 7 Q B D 78, C O R., and *R v Cartwright* (1806) Russ & Ry 106, 107, n (b) It is no answer to a charge of forgery that the false instrument would, if genuine, be invalid by reason of some objection not appearing on the face of it (*R v McIntosh* (1800), 2 East, P C 942, *R v Pike* (1838), 2 Mood C O 70) \*

(h) 2 East, P C 558, 950, *R v Hoost* (1802), 2 East, P C 950, *R v Elliot* (1777), 1 Leach, 175, *R v Collicott* (1812), 2 Leach, 1048

(i) 2 East, P C 854, see *R v Allday* (1837), 8 O & P 136, *R v Hartshorn* (1853), 6 Cox, C O 395, *R v Powner* (1872), 12 Cox, C O 235

(j) *R v Ward* (1727), 2 East, P C 861, at p 862 *Quere* whether there must be a possibility of some person being injured in consequence of the forgery (see *R v Marrus* (1846), 2 Car & Kir 356, *per* CRESSWELL, J., at p 381, *R v Houston* (1847), 2 Car & Kir 777, *R v Ward*, *supra*, 2 Russell on Crimes, 6th ed., 600, n (l), but see *R v Nash* (1852), 2 Den 493, at p 499) In *R v Holden* (1809), Russ & Ry 154, the prisoner, on the invitation of a person who was acting for the purpose of detecting forgeries, sold forged notes as forged and not as genuine

SECT 4  
Forgery

## Uttering

**1407** The offence of forgery is complete, if a false instrument is made with an intent to defraud, it is not necessary that the instrument should be uttered or published (b).

**1408** It is a common law offence to utter any forged instrument the forgery of which is an offence at common law (m)

It is immaterial whether the attempt to defraud by the uttering is or is not effectual (n)

A false document is said to be uttered, when it is parted with or tendered or used in some way to get money or credit upon it or by means of it (o)

and yet was found guilty, although owing to circumstances of which the defendant was not apprised the prosecutor could not be injured by the defendant's act. If the immediate effect of the forgery is to defraud the prosecutor, that is sufficient evidence of an intent to defraud (*R v Sheppard* (1810), Russ & Ry 169). If the forgery or uttering of a false document is part of a fraud it is immaterial that, before the false document was given, the prosecutor had already parted with the money of which it is alleged that he was defrauded (*R v Martin* (1836), 1 Mood C C 483, *R v Moody* (1862), Le & Ca 173, see *R v Boardman* (1835), 2 Mood & R 147). If a defendant pays in to his bank a forged note, it is for the jury to say whether he had an intent to defraud, even though he has given to the bank guarantees for an overdraft exceeding the amount of the note (*R v James* (1836), 7 C & P 553). To utter a bill of exchange all the names on which are fictitious is an offence if the person to whom the bill is uttered did not know that the names were fictitious, and it is immaterial that the defendant intended to provide for the payment of the bill (*R v Hall* (1838), 2 Mood C C 30). The offence is complete at the time of uttering, and it is immaterial that the bill is afterwards paid (*R v Teach* (1810), 9 C & P 499, where a defendant was convicted although the bill was paid before the institution of the prosecution). If a person utters a forged document knowing that it is forged, and means it to be taken as a genuine document, the inevitable conclusion is that he intended to defraud (*R v Cooke* (1835), 8 C & P 586, *R v Todd* (1814), 1 Cox, C C 37, see *R v Crowther* (1832), 5 C & P 316). If a person has reasonable ground for believing that he has authority to accept bills in the name of another person, and acting on that impression accepts a bill in that person's name this is not forgery, but it is forgery if he does so without authority, or belief on reasonable ground that he has authority (*R v Forbes* (1835), 7 C & P 221, *R v Parish* (1837), 8 C & P 91, *R v Beard* (1837), 8 C & P 113, *R v Beardsall* (1839), 1 F & F 229, and see *R v Smith* (1862), 3 F & F 204). It is not necessary in an indictment for forgery to allege an intent to defraud any particular person or on the trial of any such offence to prove an intent to defraud any particular person, but it is sufficient to allege and to prove that the defendant did the act charged with intent to defraud (Forgery Act, 1861 (24 & 25 Vict c 98), s 44, which is a re-enactment of the Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 8). It seems that it is not essential to constitute forgery at common law that there should be an intent to defraud any particular person (see *R v Aash* (1852), 2 Don 493 per MAULE, J., at p. 503, *Tatloe v Harris* (1789), 3 Term Rep 174, at pp 176, 181, but see *R v Muzagona* (1815), Russ & Ry 291, and *R v Trenchard* (1858), 1 F & F 43. The cases of *R v Tuff* (1848), 1 Den 319 (decided before the passing of the Criminal Procedure Act 1851 (14 & 15 Vict c 100)), and *R v Hodgson* (1856), Deas & B 3 cannot now be regarded as authorities to the contrary effect (see Greaves Criminal Law Consolidation Acts, 2nd ed., 303).

(l) *R v Elliot* (1777), 1 Leach, 175, *R v Crocker* (1805), Russ & Ry 97, at p. 98

(m) *R v Sharman* (1851), Deas C C 285

(n) *R v Sharman*, *supra* (disapproving on this point of *R v Boulton* (1848), 2 Car & Kir 601). It is usual in indictments for forgery to add a count for uttering to the count for forging, but the practice formerly was to indict for forgery a person who uttered (see 2 East, P C 973, *R v Boulton* (1848), 2 Car & Kir 601, 606, n)

(o) *R v Ives* (1852), 21 L. J. (M C) 166, C C R., per Lord CAMPBELL, O J., at

SECT. 4.  
Forgery.

A person who delivers a forged document to an accomplice in order that the accomplice may utter it does not himself thereby utter such document (*p*) If a person delivers a forged document to an innocent agent in order that the agent may utter it, the person who delivers it is guilty of uttering (*q*) A conditional uttering of a forged instrument is equally an offence with any other kind of uttering (*r*)

The punishment for a common law forgery is fine or imprisonment without hard labour, or both fine and imprisonment (*s*) Punishment

SUB-SECT. 2—*Forgery by Statute*

**1409** The Forgery Act, 1861 (*t*), and other statutes (*a*) have made various acts of forgery felonious and punishable with penal servitude, and have made other acts connected with or preliminary to forgery statutory offences. Statutory forgeries.

(1) *Bank Notes etc*

**1410** A person is by statute guilty of felony who with intent to defraud (1) forges or alters any note or bill of exchange of the Bank of England or of the Bank of Ireland, or of any other body corporate, company, or persons carrying on the business of bankers, commonly called a bank note or a bank bill of exchange or a bank post bill (*b*), (2) forges or alters any indorsement on or assignment of such bank note etc., (3) offers, utters, disposes of, or puts off any forged or altered bank note etc with knowledge that it is forged or altered, or any forged indorsement on or assignment of any such bank note etc (*c*) Forging notes etc of Bank of England etc

p 168 A person who produces for inspection a forged receipt, but refuses to part with it, utters a forgery, and it is immaterial that the forged receipt is exhibited not directly to gain credit upon it for the payment for which it purports to vouch, but to induce the belief that the person who exhibits it is a man of substance, and so to induce the person inspecting the receipt to lend money to a third person (*R v Radford* (1844), 1 Den 59 *R v Ion, supra* compare *R v Welch* (1851), 2 Den 78) But the mere showing of an instrument the uttering of which would be criminal, or the act of handing such instrument to any person to be taken care of, though done to induce the belief that the owner is a man of substance, is not uttering, unless there is clear evidence of intent to get money or credit by means of the instrument (*R v Ion, supra*, see *R v Shukard* (1811), Russ & Ry 200)

(*p*) *R v Heywood* (1847), 2 Ctr & Ku 352, *R v Palmer* (1804), 1 Bos & P (N 2) 96 Such an act would now be in some cases a statutory offence as a "disposing" or "putting away", see note (*c*), *infra*

(*q*) *R v Palmer, supra*, and see *R v Collicott* (1812), Russ & Ry 212

(*r*) *R v Cooke* (1838), 8 C & P 582

(*s*) If the forgery is successful and someone is defrauded, the offender might be indicted for a common law cheat, and might then be sentenced to imprisonment with hard labour (*R v Hamilton*, [1901] 1 K B 740, O C R., Criminal Procedure Act, 1851 (14 & 15 Vict c 100), s 29) But a person cannot be indicted for a common law cheat in respect of a forgery, unless it is successful (*R v Ward* (1727), 2 Stra 717) Forgery is not triable at quarter sessions

(*t*) 24 & 25 Vict c 98

(*a*) See pp 731 *et seq*, *post*

(*b*) See as to bank post bills and bank bills of exchange, *R v. Birkett* (1813), Russ & Ry 251

(*c*) Forgery Act, 1861 (24 & 25 Vict. c 96), s. 12. To discharge one indorsement

**SECT. 4.  
Forgery**

The punishment for the offence is penal servitude for life or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (d)

**Possession of  
forged notes  
etc**

**1411** A person is by statute (e) guilty of felony who without lawful authority or excuse purchases or receives from any other person or has in his custody or possession any forged bank note, bank bill of exchange, or a bank post bill or blank bank note, blank bank bill of exchange or blank bank post bill, with knowledge that it is forged. The onus of proving lawful authority and excuse is on the accused (f)

The punishment for this offence is penal servitude for any term not exceeding fourteen years and not less than three years, or imprisonment with or without hard labour for a term not exceeding two years (c)

**Possession of  
instruments  
etc. for  
making  
forged notes**

**1412** A person is by statute (g) guilty of felony —

(1) Who without lawful authority or excuse makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for the making of paper with the words "Bank of England" or "Bank of Ireland" or any part of such word or words intended to resemble and pass for them, or for the making of paper with curved or waving bar lines, or with the laying wavy lines thereof in a waving or curving shape, or with any number, sum, or amount expressed in a word or words in Roman letters visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used by these banks for any notes, bills of exchange, or bank post bills of such banks

and insert another, or to make an indorsement general instead of special, or to alter an indorsement (*R v Birkett* (1813), Russ & Ry 251) It is immaterial, if the alteration is such as to make the note as altered ungrammatical — e.g., to alter one pound to ten pounds (*R v Post* (1806) Russ & Ry 101) It is not necessary to constitute a forged note that the resemblance to a true note should be exact (see p 713, *ante*) A person who uses an accomplice to get rid of forged notes is guilty of "disposing and putting away" the note but not of uttering (*R v Palmer* (1804), Russ & Ry 72) As to intent to defraud, see p 713, *ante*

(d) Forgery Act, 1861 (24 & 25 Vict c 98), s 12, Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1 This offence is not triable at quarter sessions

(e) Forgery Act, 1861 (24 & 25 Vict c 98), s 13, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions

(f) Forgery Act 1861 (24 & 25 Vict c 98), s 13 As to the meaning of "lawful authority or excuse," see *R v Harvey* (1871), L R 1 C O R 284, *Dickens v Gill*, [1896] 2 Q B 310 Where the having any matter in the custody or possession of any person is in the Forgery Act, 1861 (24 & 25 Vict c 98), expressed to be an offence, if any person has such matter in his personal custody or possession, or knowingly and wilfully has it in the actual custody or possession of any other person, or in any dwelling-house or other building, lodging, apartment, held, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether he has such matter for his own use or for the use or benefit of another, every such person is to be deemed to have such matter in his custody or possession within the meaning of the Act (Forgery Act, 1861 (24 & 25 Vict c 98), s 40), see *R v Rouley* (1806), Russ & Ry. 110 If the original possession is innocent, as when a forged note is given to a person in the course of his business, and he afterwards finds out that it is forged, he does not commit any offence by retaining possession of the note (*Brooks v Harnack* 1818), 2 Stark 389)

(g) Forgery Act, 1861 (24 & 25 Vict c 98), s 14 The onus of proving lawful



SECT. 4.  
Forgery.

(2) Who makes, uses, sells, exposes to sale, utters, or disposes of, or knowingly has in his custody or possession, any paper with such words or parts of such words as before mentioned visible in the substance of the paper, or any paper with the before-mentioned lines or numbers or device or distinction (*h*).

(3) Who by any art or contrivance causes such words or parts of such words or such device or distinction to appear visible in the substance of any paper, or causes the numerical sum or amount of any bank note or bank bill of exchange or bank post bill or blank bank note, or blank bank bill of exchange, or blank post bill in a word or words in Roman letters to appear visible in the substance of the paper whereon the same are written or printed (*i*).

(4) Who engraves or makes upon any plate or upon any wood, stone, or other material, any promissory note, bill of exchange, or bank post bill, or part of such note or bill purporting to be a bank note or bank bill of exchange, or bank post bill or part of such note, or to be a blank bank note, blank promissory note, blank bank bill of exchange, or blank bank post bill of the governor and company of the Bank of England or of Ireland or of any other body corporate, company or person carrying on the business of bankers (*k*).

Forgery of  
bank notes.

(5) Who engraves or makes as aforesaid any name, word or character resembling or apparently intended to resemble any subscription to any bill of exchange or promissory note issued by any of the before-mentioned banks (*l*).

(6) Who uses, or knowingly has in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device for the making or printing of any such bank note or bill part thereof (*m*).

authority is on the defendant (*ibid*), nothing in this section is to prevent any person issuing any bill of exchange or promissory note having the amount expressed in guineas or in numerical figures denoting the amount in pounds sterling appearing visible in the substance of the paper, or from making, using, or selling any paper having waving or curved lines or any other devices in the nature of watermarks visible in the substance of the paper, not being bar lines or laying wire lines, provided they are not so contrived as to form the ground-work or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines or the watermark of the paper used by the Banks of England and Ireland (Forgery Act, 1861 (24 & 25 Vict c 98), s 15)

(*h*) Forgery Act, 1861 (24 & 25 Vict c 98), s 11

(*i*) *Ibid*

(*k*) *Ibid*, s 16 Every part of what usually circulates as a note, the ornamental border as well as the obligatory words, is part of the note (*R v Keith* (1851), Dears C C 466) Whether the engraving "purports" to be a bank note etc is a question of fact to be ascertained by comparison with a genuine note, extrinsic evidence being admissible (*R v Keith, supra*) A document which does not purport on the face thereof to be a bank note cannot be made so to purport by reason of any statement made by the party disposing of it (*R v Jones* (1779), 1 Doug (κ B) 300, see also *R v Gibbs* (1800), 1 East, 173, at p 180, n The section applies to the notes of any bankers, wherever they carry on business (*R v Brackenridge* (1868), L. R 1 C C R 133 Banks carrying on business in Scotland are included in spite of s 55, which provides that "nothing in this Act contained shall extend to Scotland." As to banks carrying on business in foreign countries, see *R v Auffret* (1898), 62 J P. 521), *R v. Hannon* (1839), 9 C & P 11

(*l*) Forgery Act, 1861 (24 & 25 Vict c 98), s. 16

(*m*) *Ibid*

**SMO. &  
Forgery**

(7) Who knowingly offers, utters, disposes of, or puts off, or has in his custody or possession, any paper on which is made or printed any blank bank note etc. of the Bank of England etc., or part of such bank note etc. or any name, word, or character resembling or apparently intended to resemble any such subscription to any such note etc. (n).

(8) Who engraves or makes upon any plate &c any word, number, figure, device, character or ornament, the impression of which resembles or is apparently intended to resemble any part of a bank note etc. of the Bank of England etc. or any other body corporate, company, or person carrying on the business of bankers (o).

(9) Who uses, or knowingly has in his custody or possession any such plate, wood, stone, or other material, or any other instrument or device for impressing or making upon any paper or other material any word, number, figure, character, or ornament resembling or apparently intended to resemble any part of a bank note or bill of the Bank of England or Ireland or any other bank (p).

**Forgery of  
bank notes.**

(10) Who knowingly offers, utters etc. or has in his custody or possession any paper or other material bearing an impression of such matter as aforesaid (q).

(11) Who makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for making paper with the name of any firm of bankers other than the Banks of England and Ireland appearing visible in the substance of the paper (r).

(12) Who makes, uses, sells, exposes to sale, utters, or disposes of, or knowingly has in his custody or possession any paper with any such name appearing in the substance of the paper (s).

(13) Who by any art or contrivance causes any such name to appear visible in the substance of the paper upon which the same shall be written or printed (t).

(14) Who engraves or makes upon any wood, stone, or other material in any language, whether intended to be under seal or not, the whole or part of any bill of exchange, promissory note, undertaking, or order for payment of money purporting to be the bill, note, undertaking, or order or part thereof, of any foreign prince or state, or any minister or officer in the service of any such foreign prince etc., or of any body corporate or body of the like nature constituted or recognised by any foreign prince etc., or of any person or company of persons resident outside the King's dominions (a).

(n) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 16.

(o) *Ibid.*, s. 17. A prisoner may be indicted under this section for having plates etc. for forging the note of a bank established in a foreign country (*R. v. Aufreit* (1898), 62 J. P. 521), as to a bank carrying on the business of bankers, but incorporated for a totally different purpose, see *R. v. Catapodis* (1804), Russ. & Ry. 65, as to custody or possession, see p. 716, *ante*.

(p) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 17.

(q) *Ibid.*

(r) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 18.

(s) *Ibid.*

(t) *Ibid.*

(a) *Ibid.*, s. 19. Formerly, where the forged bill was in a foreign language, it was necessary that the indictment should contain an English translation (*R.*

(15) Who uses or knowingly has in his custody or possession any plate etc. on which the whole or part of such foreign bill, note, undertaking, or order is engraved or made (b)

SECT. 4.  
**Forgery.**

(16) Who knowingly utters or has custody or possession of any paper on which is made or printed any part of such foreign bill, note, undertaking, or order (c).

The punishment for any such offence is penal servitude for fourteen years, or for any term not less than three years, or imprisonment not exceeding two years with or without hard labour (d)

(u) *Orders for Payment of Money etc*

**1413.** Everyone is by statute (e) guilty of felony who, with intent to defraud, forges, or alters, or utters, disposes of, or puts off with knowledge that it is forged or altered—(1) any undertaking, warrant, order, authority or request, for the payment of money (f), or for the delivery or transfer of any goods (g) or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, warrant, order, authority, or request, or (2) any accountable receipt, acquittance, or receipt for money or for goods, or for any note, bill, or other security for the payment of money, or any indorsement on or assignment of any such accountable receipt

Forging etc.  
orders etc  
for payment  
of money etc

The punishment for such offence is penal servitude for life, or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (h)

**1414** Everyone is by statute (i) guilty of felony who without lawful authority or excuse, and with intent to defraud, draws, makes, signs, accepts, or indorses any bill of exchange or promissory note, undertaking, warrant, order, authority, or request for the payment of

Fraudulent  
drawing etc  
of bill of  
exchange etc

*v Goldstein* (1822), Russ & Ry 473, and see *R v Harris* (1836) 7 O & P 429, but now it is not necessary to set out the forged instrument (Forgery Act, 1861 (24 & 25 Vict c 98), s 43). A photographic impression on glass is within the section (*R v Rinaldi* (1863), 9 L T 395, C C R). Where prisoners are charged jointly with this offence it is not necessary in order to convict them that all should have been present when the order to engrave was given, all must have jointly employed the engraver, but it is sufficient if one first instructed the others and by his authority they employed the engraver. See *R v Museum* (1840), 9 C & P 676

(b) *Forgery Act*, 1861 (24 & 25 Vict c 98), s 19, and see s 43

(c) *Ibid*, s 19

(d) *Forgery Act*, 1861 (24 & 25 Vict c 98), ss 14, 16, 17, 18, 19, *Penal Servitude Act*, 1891 (54 & 55 Vict c 69), s. 1 These offences are not triable at quarter sessions

(e) *Forgery Act*, 1861 (24 & 25 Vict c 98), s 23

(f) The order or undertaking may be conditional, and therefore not within the definition of a negotiable instrument (*R v Anderson* (1843), 2 Mood & R 469, see p 721, *post*, *R v Joyce* (1865), 10 Cox, C C 100).

(g) Even the smallest quantity, the maxim *De minimis non curat lex* having no application, so that an order to taste wine comes within the statute (*R v Illidge* (1849), 2 Car & Kir 871)

(h) *Forgery Act*, 1861 (24 & 25 Vict c 98), s 23, *Penal Servitude Act*, 1891 (54 & 55 Vict c 69), s. 1 These offences are not triable at quarter sessions

(i) *Forgery Act*, 1861 (24 & 25 Vict. c. 98), s. 24

**SECT 4**  
**Forgery.**

money or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration or otherwise, for, in the name or on the account of, any other person, or who offers, utters, disposes of or puts off any such bill, note, undertaking, warrant, order, or request so drawn, made, signed, accepted or indorsed by procuration or otherwise, without lawful authority or excuse, with knowledge that it was so drawn etc

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years with or without hard labour (k)

**Undertaking.** **1415.** An undertaking for the payment of money includes a conditional undertaking (l) The undertaking need not be for payment by the person who purports to give it, it may be a guarantee or undertaking that a third person shall pay on a contingency (m) It must, however, be an undertaking which, if genuine, would be binding in law (n)

**Warrant.** **1416** A warrant for the payment of money includes any instrument for payment under which, if genuine, the payer may recover the amount against the party signing it (o) The state of the account between the parties and the question whether the party signing it has at the time funds in the hands of the party to whom it is addressed are immaterial (p)

(k) Forgery Act, 1861 (24 & 25 Vict c 98), s 24, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(l) *R v Reed* (1845), 2 Mood C C 62, *R v Anderson* (1843), 2 Mood. & R 469 (c q, a promise to pay a specified sum, or such other smaller sum as A B may incur by reason of a suretyship)

(m) *R v Stone* (1846), 2 Car & Kir 361 See *R v Joyce* (1865), 10 Cox, C C 100

(n) That is, binding in law at the date of the forgery though not necessarily so at the date of the Forgery Act, 1861 (24 & 25 Vict c 98) Thus where a guarantee was not binding at the date of the Forgery Act, 1830 (11 Geo 4 & 1 Will 4, c 86) but was subsequently made binding by the Mercantile Law Amendment Act, 1856 (19 & 20 Vict c 97), s 3, the forgery of such a guarantee became punishable on the passing of the later Act (*R v Coelho* (1861) 9 Cox C C 8)

(o) *R v Fivian* (1844), 1 Car & Kir 719, *R v Ferguson* (1845), 1 Cox, C C 211 *R v Pulling* (1858), 1 F & F 324, and see *R v Dawson* (1851), 2 Den C C 75 As to instruments which would be of no force, even if genuine, but upon which money is in fact paid, see *R v Rouse* (1849), 4 Cox, C C 7, and p 721, *post*

(p) *R v Fivian, supra* It is not necessary that the name of a party who is in account with another should be forged, it is sufficient if the name of that party's agent or of a person saying in effect that he has that party's authority to require payment be forged (*ibid*)

A document in the following form "to A B & Co Pay to my order two months after date, to C D the sum of 80l and deduct the same out of my account," being unsigned, but indorsed, and having the word accepted and the name of the acceptor written across the face, constitutes a warrant, because, if genuine, it would be a warrant from the acceptor to A B & Co to pay the money (*R v Smith* (1843), 1 Car & Kir 700) So a document in the following form was held to be a warrant—"Mr L London Bought of D two bushels of apples 9s November 9 Sir,—I hope you will excuse me sending for such a trifle but I am obliged to hunt after every shilling D" (*R v Dawson* (1851), 2 Den 75, see also *R v Harris* (1812), 1 Car & Kir 179). An ordinary cheque or bill of exchange is a warrant (p 723, *post*), and is

A warrant need not be addressed to any particular person (*g*), and may be conditional (*i*), but a mere request to pay is not a warrant (*e*). A warrant or order for the payment of money must purport to be made by some person who might command the payment of the money and to be made upon a person who is bound to obey the command (*i*).

SMO. 4.  
Forgery.

A document in the form of a certificate or receipt may be shown by parol evidence to be treated in the course of a particular business as a warrant (*a*). Authority and request.

An indictment lies for forging a mere authority or request for the payment of money (*b*)

**1417** If an instrument, had it been genuine, would have been effectual in the ordinary course of business between the parties as an order, no defect being patent on the face of it, such instrument may be the subject-matter of a forgery, although the instrument itself, if genuine, would have been void in law for want of compliance with some statutory direction governing the particular form of order (*c*)

Forgery of  
void  
instrument

warrant includes a forged cheque drawn on a bank where the supposed drawer has a deposit account on which he is not entitled to draw cheques (*p* 723, *post*, *R v Williams* (1816), 2 Car & Kir 51), but such cheque is not an "order." A post office money order is an order for the payment of money within the section (Post Office Act 1908 (8 Edw 7, c. 48), s 59, see *R v Gulchrist* (1841), 2 Mood C C 233)

(*g*) *R v Rogers* (1839) 9 C & P 41

(*r*) *R v Anderson* (1843), 2 Mood & R 469

(*a*) *R v Thorn* (1841), Car & M 206

(*i*) *R v Clinch* (1791), 2 East, P C 934

(*a*) *R v Kay* (1870), 11 Cox, C C 529, C C R. A certificate may be shown by certificate of character, although its production may entitle a person to the evidence to be treated as a warrant (*R v Rogers* (1839), 9 C & P 41), but a payment of money, is neither an undertaking nor a warrant nor an order for the payment of money (*R v Mitchell* (1860), 2 F & F 44)

(*b*) See Forgery Act, 1861 (24 & 25 Vict c 98), s 23. As to a pawnbroker's ticket, see *R v Morrison* (1859) 8 Cox, C C 194, C C R

(*c*) *R v Muckinash* (1800), 2 Leach, 893, where the order was an order by a seaman which, if genuine, would have been void for want of attestation under stat 32 Geo 3, c 31, s 2, and see *R v Richards* (1811), Russ & Ry 193. See, too, *R v Jones* (1764), 1 Leach, 53, where to an indictment for forging an order for the redelivery of plate sent to Goldsmiths' Hall to be marked in the form "please to deliver my work to the bearer" it was held to be no defence that the order was irregular because by the rule of the plate office the several species of work with the weight of the silver ought to have been mentioned in the order, *R v Pike* (1838) 2 Mood C C 70, where to an indictment for forging one of the signatures to an order of a board of guardians of a poor law union it was held that it was no defence to show that the person who signed the order as presiding chairman was not in fact chairman on the day when he signed, *R v McConnell* (1844), 1 Car & Kir 371, where the forged "pass" of a discharged prisoner whereby he was made to appear entitled to certain payments under stat 5 Geo 4, c 85, was held to be a forged warrant and order for the payment of money, although the forged pass was not in statutory form or properly sealed, see, however, *R v Donnelly* (1835), 1 Mood C C 438, where a similar document was held not to be a warrant or order, but in that case the document was ungrammatical and at variance with the form given in the Act, and therefore defective on the face of it, see also *R v Moffatt* (1767), 1 Leach, 431 where the defect of form was patent on the face of the instrument, *R v Vanderstein* (1865), 10 Cox, C C 177, C C R (Ir), where it was held that a forged post office order was an order for payment of money, though signed in an irregular manner, and though no letter of advice was ever

## SECT 4

**Forgery**

Forging  
incomplete  
document.

An instrument which after making or alteration still remains incomplete (*d*) and has no resemblance to a genuine instrument cannot be an order.

An ineffectual addition to a document which already constitutes a complete order is not forgery, but where the document is so far incomplete that a signature is required as a condition of payment, as in the case where dividend warrants of a railway company require the shareholders' indorsement before the money can be paid, the false making of such signature is forgery of a warrant or order for payment of money (*e*).

Date of  
order

**1418** It is not necessary that the party to whom an order to pay is directed should be bound to pay at once, or, it appears (*f*), unconditionally. Thus, a post-dated cheque constitutes an order (*g*), as also does an order for payment on a certain date contingent upon a certain event (*h*).

sent, *R v Rouse* (1819), 4 Cox, C C 7, where it was held that an indictment for forging a certificate purporting to relate to the death of the member of a lodge which had been dissolved could not be sustained, as at the time of the forgery there was no such lodge in existence. It is immaterial, however, whether the name forged be that of an actually existing or fictitious person (*h v Lockitt* (1772), 1 Leach, 94, *R v Vanderstein*, (1865), 10 Cox, C C 177, C C R (11)).

(*d*) *I. q.*, where an order is not under seal as required by a statute and is addressed to the wrong person and is otherwise irregular (*R v Rushworth* (1816) Russ & Ry 317), *quære* whether such a document would not now be an "authority" or "request" within the meaning of s 24 of the Forgery Act, 1861 (24 & 25 Vict c 96). *R v Rushworth, supra*, was decided under stat 7 (Geo 2, c 22, which did not contain those words. *R v Lee* (1848), 3 Cox, C C 80, where by the rules of a society all cheques upon the bankers of the society were required to be signed by four members and countersigned by the clerk, and the signatures of the four members were forged, and the signature of the clerk was afterwards obtained, it was held that although the instrument was not complete until the signature of the clerk had been obtained, yet as the clerk's signature was subsequently obtained, an indictment for forging a warrant for the payment of money was sustainable, if a signature is forged to an incomplete document which if complete would be an order for the payment of money, and the document is afterwards completed, then the document becomes an order, and the offence of forgery is complete.

(*e*) *R v Autey* (1857), 7 Cox, C C 329, C C R. This case was decided before the Forgery Act, 1861 (24 & 25 Vict c 98), s 23, which for the first time made the forgery of an indorsement a substantive offence. In such a case as *R v Autey supra*, a person might now be indicted either for forging a warrant for the payment of money or for forging the indorsement on such a warrant.

(*f*) See, however, *R v Howie* (1869), 11 Cox, 320.

(*g*) *R v Taylor* (1843), 1 Car & Kir 213.

(*h*) *R v Lonsdale* (1847), 2 Cox, C C 222. It is not necessary to aver in the indictment the performance of the condition (*ibid*). An order to pay A B or order a sum as advance money on an intended voyage, with a marginal note "on receiving the cheque I agree to sail in the ship *Mary Ann*, and to be on board within sixteen hours from the date of this cheque," has been held to be an order for payment of money (*R v Bamfield* (1834), 1 Mood C C 418, see also *R v Anderson* (1843), 2 Mood & R 469), but a seaman's advance note containing a promise to pay ten days after the sailing of a ship a sum of money to any person advancing the same to A B "provided the said A B shall sail in the said ship" was held not to be a promissory note or order for the payment of money, because it was conditional (*R v Howie* (1869), 11 Cox, 320). In the case it was held, it seems, that the document was not a promissory note, *quære* whether, if the indictment had been for forging an order for the payment of money, it would have been good, see *R. v Lonsdale, supra*.

**1419.** An ordinary bill of exchange (i) or cheque (k), constitutes both a warrant and an order, a warrant authorising the banker to pay, and an order upon him to do so (l), and a cheque is none the less an order by reason that the banker has no assets in his hands of the party who appears to have signed it (m). A person, however, who has a deposit account on which he is not entitled to draw cheques cannot draw a cheque which constitutes an order, and even though such cheque be honoured, it is not an "order," though it is still a "warrant," and may be so described (n).

SECT. 4.  
**Forgery.**

Nature of  
warrant or  
order.

**1420** An order for the delivery of goods or money must, in order to come within the statute, purport to be the order of the owner, or of some person who claims an interest in or a disposing power over such goods or money, so that the person to whom it is addressed is bound to obey it (o). It is not the less an order by reason that the person to whom it is addressed has no authority to obey it, until some form has been complied with (p).

Order must  
purport to be  
genuine.

**1421** It is not necessary that the order should be addressed to anyone, if the evidence shows for whom it is intended (q). There must, however, in the case of an order for payment of money, be a payee, so that an instrument payable to blank or order is not an order for the payment of money (r).

Addressee.

**1422** In order to ascertain the nature of a given instrument both

Interpreta-  
tion.

(i) *R v Shepherd* (1791), 2 East, P C 944, *R v Willoughby* (1783), 2 East, P C 944, see *R v Ravenscroft* (1809), Russ & Ry 101

(k) *R v Crouther* (1832), 5 C & P 316

(l) *R v Crouther*, *supra*, per BOSANQUET, J, at p 317. It may therefore be described as a warrant and order for the payment of money

(m) *R v Lockett* (1772), 1 Leach, 91, *R v Abrahams* (1781), 2 East, P C 941, *R v Crouther* (1832), 5 C & P 316, *R v Denny* (1845), 1 Cox, C C 178, *R v Carter* (1845), 1 Den 65, per PARKER, B, at p 67, *R v Dawson* (1851), 2 Den 75, per CRESSWELL, J, at p 77

(n) *R v Williams* (1816), 2 Car & Kir 51

(o) *Mitchell's (Mary) Case* (1754), Fost 119, where the prosecution failed, because the alleged order was in substance a request. That case, which was decided under stat (1734) 7 Geo 2, c 22, has been frequently cited and followed. *R v Ellor* (1784), 1 Leach, 323, and *R v Clinch* (1791), 1 Leach, 540, 544, decided under the same statute, are to the same effect. But the wording of the Forgery Act of 1861 (24 & 25 Vict c 96), s 23, is different, and provides for the forgery of a mere request for the payment of money or the delivery of goods see GRAVES, Criminal Law Consolidation Acts, 2nd ed., 285, see *R v Newton* (1838), 2 Mood C C 59, under the Forgery Act, 1830 (11 Geo 4 & 1 Will 4, c 66), which provided for forgery of a request for the delivery of goods or for the delivery of a security for the payment of money

(p) *R v Illidge* (1849), 2 Car & Kir 871

(q) *R v Gulchrist* (1841), Car & M 221, *R v Snelling* (1863), 6 Cox, C C 230. The authorities to the contrary effect (*R v Clinch* (1791), 1 Leach 540, *R v Denny* (1845), 1 Cox, C C 178, *R v Ravenscroft* (1809), Russ & Ry 161) must be deemed to be overruled or inapplicable. In this respect there is no distinction between an order and a request, evidence being admissible in both cases to show to whom the instrument is addressed (*R v Snelling*, *supra*, per WILLIAMS, J, at p 235, *R v Cullen* (1831), 1 Mood C C 300, *R v Carney* (1832), 1 Mood C C 351, *R v Pullbrook* (1839), 9 C & P 37

(r) *R v Richards* (1811), Russ & Ry 193

**SECT. 4.**  
**Forgery**

the form and substance must be regarded (*s*) Words which are ambiguous in themselves and are not shown to be used in a special sense will not be held to constitute an order, request, or warrant (*t*), but evidence is admissible to show that an instrument, though in the form of a request, is treated in the ordinary course of business as an order (*a*), or, though in the form of a certificate (*b*) or receipt (*c*), is treated as a warrant, authority or request (*d*) To constitute a "request" for delivery of goods or money it is not necessary that the person whose writing is forged should have any authority over or interest in the goods or money sought to be obtained (*e*)

As in the case of an order, it is not necessary that such request should be addressed to the person whom the indictment alleges that it was intended to defraud (*f*), or even that it should be addressed to any person whatever (*g*)

**Security  
for money**

**1423** A security for payment of money must be one which, if genuine, would be binding at law A person who, in consideration of a creditor forbearing to sue, gives an I O U signed by himself, and also forges the name of another person thereto, is guilty of forging a security (*h*)

(*s*) The difference between an order and a request is that a request purports to be made without authority to command an order with authority (*R v Snelling* (1853), 6 Cox, C C 230 (C C R, per JERVIS (C J, at p 233) See also *R v Thurn* (1811), 2 Mood C C 210, *R v Dawson* (1801) 2 Den 75 As to the indorsement of a letter of credit see *R v Hilton* (1808), 1 F & F 391, as to an instrument in the form of a bill of exchange, but without an acceptance, see *R v Curry* (1811), 2 Mood C C 219 In *R v Igan* (1843), 1 Cox C C 29, it was held that a document in the following words, "I hereby authorise my servant man A B to procure a watch of you" was not an order or request, but such a document would be an "authority" which word was probably inserted to meet that case in the Forgery Act, 1861 (24 & 25 Vict c 94), s 23

(*t*) Such words as "per bearer," followed by a description of goods and a signature (*R v Cullen* (1831), 1 Mood C C 300), or "W Trim, 2s" (*R v Ellis* (1850), 4 Cox, C C 208) do not amount to an order or request for the delivery of goods But see *R v Pullbrook* (1839), 9 C & P 37

(*a*) *L q*, foreign letters requesting a correspondent of the writer in England to advance money (*R v Raake* (1838), 2 Mood C C 66, a document in these words "Mr J Please to pay A B the sum of £13, by order of C D your obliged C D" (*R v Carter* (1814) 1 Car & Kir 741), see *R v Denny* (1845), 1 Cox C C 178 and *R v Turberville* (1849), 4 Cox, C C 13, *R v Snelling* (1853), 6 Cox, C C 230, C C R, per JERVIS, C J, at p. 233

(*b*) *R v Rogers* (1839) 9 C & P 41

(*c*) *R v Kay* (1870) 11 Cox, C C 529, C C R; where it was proved that by the custom of a building society such instruments were so treated

(*d*) *R v Walters* (1812), Car & M 588, see *R v Hunter* (1794), 2 Leach, 624; *R v Rouse* (1849), 4 Cox, C C 7, *R v Turberville* (1849), 4 Cox, C C 13; *R v Snelling* (1853), 6 Cox, C C 230, and cases there cited, but see *R v Ellis* (1850), 4 Cox C C 258

(*e*) *R v Thomas* (1837) 2 Mood C C 16, *R v James* (1838), 8 O & P 292, and see *R v Evans* (1833), 5 C & P 353

(*f*) *R v Carter* (1834) 7 C & P 134

(*g*) *R v Carnen* (1832), 1 Mood C C 351, *R v Cullen* (1831), 1 Mood. C C 300, *R v Pullbrook* (1839) 9 C & P 37

(*h*) *R v Chambers* (1871) 12 Cox, C C 109, C O R.



1424. A receipt or acquittance is to be distinguished from an authority to pay (s). A mere recital or memorandum of a payment not purporting to be signed or acknowledged by the pretended payee is not a receipt, though properly stamped and uttered as a receipt (k). But if an instrument purporting to be an agreement contains a recital of indebtedness followed by a release upon the payment of certain money and the words "the receipt of which money is hereby acknowledged," these words constitute a receipt (l).

It is not necessary that the words "receipt" or "received" should appear at all. An instrument which represents that a person has received goods for which he holds himself accountable to another is an accountable receipt, although the word "received" does not appear on it (m).

An instrument, the possession of which entitles a person to receive a delivery note, which delivery note enables him in the course of a business to obtain possession of the goods described

SECT. 4.  
**Forgery.**  
Receipt.

(i) *R v Parker* (1817), 2 Cox, C C 274, also reported as *R v Cooper* (1847) 2 Car & Kir 586, where the treasurer of a county in paying the expenses of a prosecution was accustomed to pay the whole amount to the attorney for the prosecution, but before making payment he required the signature of every person named in the order for payment to be written on the back of the order, and it was held that such signature was not a receipt, but only an authority from the person signing to the treasurer to pay the person producing the order. This case is now provided for by the addition of the word "authority" to the Forgery Act, 1861 (21 & 25 Vict c 98), s 23, stat 7 Geo 4 & 1 Will 4, c 86, s 10 under which *R v Parker, supra*, was decided, did not have the word "authority." See *R v Rice* (1831), 6 C & P 631, where a receipt signed by the captain of a detachment, on the authority of which money was received from an army agent, was held to be a receipt, although it was proved that such receipts were frequently cashed by tradesmen who afterwards received the money from the army agents, and see *R v Hope* (1831), 1 Mood C C 414, where it was held that a paymaster's receipt for soldiers' subsistence money which was cashed and ultimately paid to bearer by the agent of the regiment was properly described as a receipt, and not an order for payment of money.

(k) *R v Harvey* (1812), Russ & Ry 227. A signature is not necessary, however, to complete the forgery of a receipt (*R v Indi* (1814) 2 Car & Kir 636). A scrip certificate of a railway company, although it referred to the payment of a sum of money by the holder and acknowledged the right of the holder to interest and to a share in the company was held not to be a receipt or acquittance or an undertaking for the payment of money (*R v Heat* (1847), 1 Den 258, *Clark v Newsum* (1847), 1 Lxch 131).

(l) *R v Hill* (1847), 2 Cox, C C 246, see *R v Vaughan* (1838), 8 C & P 276.

(m) *R v Pries* (1853), 6 Cox, C C 165 where the document read, "By order of A B we have this day transferred into the name of C D 759 quarters wheat ex E F Entered by A B and now lying at our granaries G H." A pawnbroker's ticket is an accountable receipt for goods (*R v Fitchie* (1807), 7 Cox, C C 257, C C R, per CROMPTON J, at p 260). A turnpike ticket is a receipt for money (*R v Fitch* (1862), 9 Cox, C C 160, C C R). An ordinary railway ticket is not an acquittance or receipt for money (*R v Gooden* (1871), 11 Cox, C C 672). A document called a "clearance," certifying that a member of a friendly society has paid all dues and demands, is not an acquittance or receipt (*R v French* (1870), 11 Cox, C C 472, C C R). If a person writes under a tradesman's bill the word "paid" and the name of the tradesman, thus purports to be a receipt for money (*R v Houseman* (1837), 8 C & P 180). See *R v Martin* (1836), 7 C & P 549, overruling *R v Thompson* (1801), 2 Leach, 910. As to proving that a document which does not purport to be a receipt is a receipt, see *R v Hunter* (1794), 2 Leach, 624, *R v Rogers* (1839), 9 C & P 14.

**SECT. 4.**  
**Forgery**

therein, is a receipt (*n*) An entry in a banker's pass-book is an accountable receipt for the payment of money (*o*).

The receipt need not be for money which the person defrauded held in his individual right, it may be for money which he held in right of others (*p*)

It is not necessarily that the forgery should be in the body of the receipt (*q*) The document must, however, be complete, and therefore a "scrip receipt" not filled up with the name of the subscriber is not a receipt (*r*)

Forgery may be committed in respect of a copy of a receipt if the party making the false copy relies upon it as evidence upon the supposed loss of the original (*s*)

Where part payment has been received by an agent for his principal and duly accounted for, and after the termination of the agency, the former agent collects the balance of the debt under false pretences and alters the receipt previously given, such alteration of a "spent" receipt is not forgery of a receipt (*t*)

(*n*) *R v Mough* (1857), 7 Cox, C O 101

(*o*) *R v Harrison* (1777), 1 Leach 180, and see *R v Smith* (1862), 9 Cox, C O 162, C O R, where a prisoner, who was both treasurer and member of an unenrolled friendly society, made fictitious entries in a book purporting to be a bank pass book (such entries purporting to vouch that he had paid certain moneys into the bank, and that the bank had acknowledged the receipt of them, whereas the entries were false and fraudulent), and it was held that the prisoner, although a member of the society and interested in the moneys, might be convicted of forgery of a receipt, and see *R v Atkinson* (1811), 2 Mood C C 215, where bankers being accustomed to give receipts on deposit of money in the following form "Received of A B £85 to his credit This receipt not transferable," and on the return of the receipt with A B's signature to repay the money with interest, it was held that forgery of A B's signature constituted forgery of an "acquittance" for £85 and interest

(*p*) *E g*, on behalf of a charitable institution (*R v Jones* (1785), 1 Leach, 366)

(*q*) Thus where the body of an accountable receipt acknowledged four pounds, and the prisoner altered the figure 4 in the corner of the receipt to 40, and in passing the instrument stated that the word four in the body had been written by mistake, it was held that the prisoner had committed forgery (*R v Johnston* (1811), 5 Cox, C C 133, C C R (Ir))

(*r*) *R v Lyon* (1793), 2 Leach 597 Such a case is to be distinguished from an entry in a banker's pass-book, where the entry purports to be in a book containing receipts from customers, and therefore shows that the money was received from the person to whom the book belonged

(*s*) *Upfold v Lest* (1801), 5 Esp 101

(*t*) *R v Sargent* (1863), 10 Cox, C C 161 The offence here committed is that of obtaining money by false pretences It is not forgery of a receipt for a person to sign a receipt in his own name for someone else, *e g*, "Received for R Auchman, G Aiscott" (*R v Aiscott* (1834), 6 C. & P 408) and such receipt is apparently not within s 24 of the Forgery Act, 1861 (24 & 25 Vict c 98) If words are added which do not alter the original character of the receipt this of itself does not amount to forgery of a receipt (*R v Milton* (1866), 10 Cox, C C 364) In a case where a station-master, whose duty it was to pay B both for collection and delivery of parcels, set down items of collection and delivery in parallel columns, but paid for collection only, and obtained a receipt at the bottom of the collection column, under which he secretly put a stamp and wrote across it the amount appearing due on both columns, it was found by the jury that the document to which this addition was made bore a different meaning afterwards from that which it bore before, and it was held that the prisoner was rightly convicted of forging a receipt (*R v Griffiths* (1858), 7 Cox, C C 501, C C R.)

(iii) *Bills of Exchange etc.*

SECT. 4.

**Forgery.**Forging bill  
of exchange  
etc.

**1425** Everyone is guilty of felony who, with intent to defraud (a), (1) forges or alters any bill of exchange (b) or any acceptance, indorsement, or assignment thereof, or any promissory note (c) or indorsement or assignment thereof, or knowingly offers, utters etc. any such bill etc. with knowledge that it is forged (d); (2) obliterates, adds to, or alters the crossing on any cheque or draft on a banker (e); (3) offers, utters etc. (f) any such cheque or draft with any such obliteration, addition or alteration of words with knowledge that such obliteration etc. has been made (g).

The punishment for such offence is penal servitude for life, or for any period not less than three years, or imprisonment for not more than two years, with or without hard labour (h).

**1426** Everyone is by statute guilty of felony who without lawful authority or excuse (i) and with intent to defraud draws, makes, signs, accepts, or indorses any bill of exchange or promissory note by procuration or otherwise on behalf of any other person, or offers, utters, disposes of or puts off any such bill or note, so drawn etc. with knowledge that it was so drawn etc.

Drawing bill  
etc. by  
procuration.

The punishment for such offence is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years, with or without hard labour (k).

**1427** The expression "a bill of exchange" includes a cheque (l). A document which by reason of the transposition of words departs

Cheques.

(a) As to intent to defraud, see *R v Wilson* (1847), 2 Car & Kir 527, *Flourer v Shaw* (1818), 2 Car & Kir 703, *R v Honten* (1813), Russ & Ry 260, and p 713, *ante*.

(b) *E v Birkett* (1813) Russ & Ry 251, *R v Chisholm* (1815), Russ & Ry 297. The words "any bill of exchange" have been held to cover foreign as well as inland bills (*R v Roberts* (1857), 7 Cox, O C 422, C C R (Ir)).

(c) A conditional agreement to pay is not a promissory note (Bills of Exchange Act, 1882 (45 & 46 Vict c 61), s 83 (1)). See *R v Howie* (1869), 11 Cox, C C 320, as to an instrument alleged to be a promissory note, but really a nullity, see *R Burle* (1822) Russ & Ry 496.

(d) Forgery Act, 1861 (24 & 25 Vict c 98) s 22. As to definition of bill of exchange and promissory note, see Bills of Exchange Act, 1882 (45 & 46 Vict c 61), ss 3 (1), 83 (1), and title BILLS OF EXCHANGE, Vol II, p 462.

(e) The term "cheque or draft on a banker" includes any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated between two transverse lines (The Local Loans Act, 1875 (38 & 39 Vict c 83), s 32) and on any document issued by a customer of any banker intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document (Revenue Act, 1983 (46 & 47 Vict c. 50) s 17).

(f) Forgery Act, 1861 (24 & 25 Vict c 98), s 25.

(g) *Ibid*.

(h) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions.

(i) This section does not, like many others, provide that the proof of lawful authority or excuse shall lie on the party accused.

(k) Forgery Act, 1861 (24 & 25 Vict c 98), s 24, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions.

(l) Bills of Exchange Act, 1882 (45 & 46 Vict c 61), s 73, where a cheque is defined as a bill of exchange drawn on a banker, payable on demand.

SECT 4  
Forgery

Altering  
amount of  
bill of  
exchange

from the ordinary form of a cheque may still be a cheque for the forgery of which an indictment will lie (*m*) Forgery may be committed in respect of a post-dated cheque (*n*)

**1428** The alteration of a bill of exchange from a lower to a higher sum constitutes forgery as well as "altering", therefore a prisoner who has committed such offence may be convicted without any specific charge of altering in the indictment (*o*) Alteration of the date of payment, or even the slightest insertion, alteration, or erasure in any material part of a true instrument so as to give it a new operation constitutes forgery (*p*)

It is not necessary that the bill or note as altered should be grammatical (*q*) or negotiable (*r*), or that the signature should be a *fac simile* of that of the person whose signature it purports to be (*s*)

There can be no forging or uttering of a bill of exchange or note, if it is incomplete as forged (*t*)

(*m*) The test appears to be whether the drawer would be obliged to pay, if the bank refused. Thus "pay Mr C seventeen or better pounds, eleven shillings," dated, signed and addressed as a cheque, was held to constitute a cheque (capable of being the subject of forgery) (*R v Boreham* (1847), 2 Cox, C C 189)

(*n*) See Bills of Exchange Act, 1882 (45 & 46 Vict c 61), s 13(2). In *R v Taylor* (1813), 1 Car & Kir 213, which was the case of a post-dated cheque, the indictment was for forgery of an order for the payment of money. An indictment for the forgery of a cheque would in such a case now, it seems, be good. As to forgery of an unnecessary indorsement for the sake of obtaining credit and getting a cheque cashed, see *R v Wardell* (1862), 3 F & F 52

(*o*) *R v Leaque* (1802), Russ & Ry 31

(*p*) *R v Atkinson* (1837), 7 C & P 669, *per* PARK, J, at p 671, *R v Treble* (1810), 2 Taunt 328, Ex Ch (alteration of place of payment), and see *Dishon v Weatherly* (1834), 6 C & P 758 (insertion of place of payment). But where a customer of a bank on receiving back a paid cheque altered the handwriting and returned it, declaring it to have been a forgery, not for the purpose of giving a new operation to the cheque, but in order to support a false charge of forgery, and in order to obtain money by a false pretence, it was held that such alteration was not forgery (*Brittain v Bank of London* (1863), 3 F & F 465). Such an act would be indictable as an attempt to obtain money by false pretences, see p 692, *ante*

(*q*) *R v Post* (1806), Russ & Ry 101 (a banker's one pound note changed to ten pound, pound being left in the singular)

(*r*) *R v Box* (1815), Russ & Ry 300, *R v Wintertottom* (1814), 2 Car & Kir 37 (a bill payable to the order of four persons indorsed with the forged signature of one of them)

(*s*) *R v Mahony* (1854), 6 Cox, C C 487, C C R (Ir) (where a prisoner induced his wife, whose maiden name was Ann Watters, to sign two notes A Watters, and handed them to the prosecutor as being the notes of his mother-in-law Catherine Watters, it was held that the variation of signature, not being sufficient to put a party on inquiry, did not prevent the prisoner from being guilty of forging and uttering), see also *R v Parke* (1843), 1 Cox, C C 4, and compare *R v Fitzgerald* (1741), 1 Leach, 20 (a conviction for forging a will of Peter Perry under the name of John Perry)

(*t*) *E.g.*, if there is no signature to a promissory note (*R v Pateman* (1821), Russ & Ry 455, or no drawer's name to a bill of exchange (*R v Harper* (1881), 7 Q B D. 78, C C R), *R v Butterwick* (1839), 2 Mood & R 196, *R v Mopary* (1868), 11 Cox, 143), see Bills of Exchange Act, 1882 (45 & 46 Vict c 61), s 3, or no payee's name (*R v Pandall* (1811), Russ & Ry 195, *R v Richards* (1811), Russ & Ry 133). It seems that one who writes another person's name across a blank stamp cannot be convicted of forgery, though the stamped document be

**1429** To sign a bill or indorsement in an assumed name with intent to defraud is forgery, and it is immaterial that the bill would have been equally taken if the person charged had indorsed his own name (a)

**SECT. 4.  
Forgery.**

Use of  
assumed  
name

Where a person has assumed a false name for the purpose of committing a fraud by drawing, accepting, or indorsing bills in that name, and subsequently signs bills in that name, he commits forgery, and the onus is upon him of proving that he assumed the false name on other occasions and for other purposes (b). But if a person has assumed the name for other fraudulent purposes and signs the assumed name to a false instrument, he is not guilty of forgery, unless when he assumed the fictitious name he contemplated the making of the false instrument (c).

An acceptance, drawing, or indorsement written or procured to be written in the name of a fictitious or non-existing person is a forgery (d), and as in the case of an assumed name it is immaterial

Fictitious or  
non-existing  
person

afterwards filled up by a confederate (*R v Cooke* (1838) 8 C & P 582). But if the person who forges the name, utters the instrument after it has been filled up, he could be convicted of the offence of uttering (*ibid*). So if a cheque which requires the signature of more than one person is altered, while it only has the signature of one, the person who made the alteration cannot be convicted of forging the cheque (*R v Turpin* (1849) 2 C & K 820). There cannot be a conviction for forgery of a bill, if on the face of it is void (*R v Moffatt* 61787, 1 Leach, 431), but there may be a conviction for forgery, if the bill is void for reasons not appearing on the face of it (*R v Mukimosh* (1800), 2 Leach, (83)). A person who forges a document in the form of a bill of exchange, but requiring the drawee to pay to his own order, accepted by the drawee and indorsed by the drawer, cannot be convicted of forging a bill of exchange (*R v Bartlett* (1841), 2 Mood & R 362). See now Bills of Exchange Act, 1882 (45 & 46 Vict c 61, s 5), and *Fidler v Marshall* (1861), 9 C B (N S) 606, *Peto v Reynolds* (1854), 9 Exch 410, *Edis v Bury* (1827), 6 B & C 433. As to forgery of a document in the form of a promissory note, made payable to a number of unspecified persons associated under a general name and not constituting a firm or corporation, see *R v Clarkson* (1844), 1 Cox, C C 110, but see the definition of promissory note in the Bills of Exchange Act, 1882 (45 & 46 Vict c 61), s 83. As to a bill of exchange without a drawee, see *R v Hawkes* (1838), 2 Mood C C 60, *R v Smith* (1843), 2 Mood C C 295, *Gray v Malner* (1819), 8 Taunt 739, *R v Hunter* (1823), Russ & Ry 511, *R v Curry* (1841), 2 Mood C C 218, but see now Bills of Exchange Act, 1882 (45 & 46 Vict c 61), s 3. A document in the form of a bill in which the words "(without acceptance)" are added is none the less a bill of exchange (*R v Kinnear* (1838), 2 Mood & R 117). A person may be convicted of forgery of a document which by law should be stamped, although it is unstamped or insufficiently stamped (*R v Reculet* (1796), 2 Leach, 703, *R v Hawkeswood* (1783), 1 Leach, 257, *R v Morton* (1795), 2 East, P C 955).

(a) *R v Marshall* (1804), Russ & Ry 75, *R v Francis* (1811), Russ & Ry 209, *R v Whyte* (1851), Russ & Ry 90.

(b) *R v Peacock* (1814), Russ & Ry 278.

(c) *R v Whyte* (1851), 5 Cox, C C 290, *R v Montien* (1813), Russ & Ry 260, *R v Pearock*, *supra*, see *R v Aickles* (1787), 1 Leach, 438; see 2 East, P C 969.

(d) *R v Rogers* (1838), 8 C & P 629, *R v Taft* (1777), 1 Leach, 172, *R v Bolland* (1772), 1 Leach, 83, *R v Taylor* (1779), 1 Leach, 214, *R v Mitchell* (1847), 1 Den 282, *R v Lockett* (1772), 1 Leach, 94 (signing a fictitious name as the pretended drawer of a cheque). Proof that no person of the drawer's name keeps an account or has a right to draw cheque on the drawee is *prima facie* evidence that the drawer is a fictitious person (*R v Buckler* (1831), 5 C & P 118, and see *R v Ashby* (1860), 2 F & F 560).

**SECT 4**  
**Forgery**

that the money obtained by the uttering of the forged indorsement might equally have been obtained by a true indorsement (e)

An acceptance written by a person in his own name to represent a fictitious firm (e), or an indorsement written by a person in his own name (which happens to be the same as that of the payee) with the knowledge that the real payee is another person (f), is forgery

It is not forgery for anyone to pass himself off as the person whose genuine indorsement is on a bill (g).

**Unauthorised  
acceptance  
etc.**

**1430** It is forgery to write or procure another person to write the acceptance of an existing person without his authority (h) It

(e) *R v Taft* (1777), 1 Leach, 172, and *R v Taylor* (1779), 1 Leach, 214

(f) *Mead v Young* (1790), 4 Term Rep 28, see also *R v Parke* (1843), 1 Cox, 4, where a bank post bill payable to J Parke & Son, and intended for John Parke & Son, was obtained by a person carrying on business as J Parke & Co., and indorsed by him in name of Jas Parke & Son, a fictitious firm, intent to defraud being proved, it was held that the indorser was guilty of forgery. If A B with the authority of O D, who has the same name as E F, writes the name of C D for the purpose of passing a bill off as that of E F, A B is guilty of forgery, and this whether E F is an existing or a non existing person. But if a person gives a note entirely as his own, his signing it in a fictitious name is not forgery, if the credit is given wholly to himself without any regard to the name signed or to any third person (*R v Martin* (1879), 5 Q. B. D 34, C O R., *R v Dunn* (1765), 1 Leach, 57, *R v Purkes* (1796), 2 Leach, 775)

(g) *R v Hevey* (1782), 2 East, P O 856. A person who acted in this way might be convicted of obtaining or of attempting to obtain money by false pretences, see p 692, *ante*. When a bill is addressed to a person whose name is given with a description and addition, and the bill is accepted by a person who bears that name but to whom the description and addition do not apply, and there is no one of that name to whom that description and addition do apply, the person who utters such a bill containing the false description is not guilty of forgery (*R v Webb* (1819) Russ & Ry 405), and see *R v Lapps* (1864), 4 F & L 81, where a prisoner having induced a person to accept a bill directed to B, but having no addition, description or address, subsequently added a false address but no description, representing that the acceptance was that of "a customer," it was held there was no forgery. In these two cases there was no evidence that the prisoner intended to make the acceptance to appear to be by a person other than the actual acceptor (*ibid.*, at p 53, per WILLES, J). But where a prisoner induced a person to sign his name upon a blank stamp, and afterwards on the paper where the name appeared wrote a bill of exchange with the name of a drawee identical with the name signed, and added a place of payment in another town, intending the bill to appear drawn upon and accepted by another existing person of the same name as that signed, but residing in such other town, it was held that forgery had been committed (*R v Blenkinsop* (1847), 2 Car & Kir 531), and it is immaterial whether such other person actually exists or not (*R v Lapps, supra*), but see *R v Watts* (1821), Russ & Ry 436 (where a prisoner uttered a promissory note purporting to be drawn by A B of Tipton and payable to prisoner and stated at the time that A B kept the "Bull's Head" at Tipton, it was held that he was guilty of forgery, although there were two persons of the drawer's name at Tipton, and only the one who kept the "Bull's Head" was called to deny the signature), *R v Hampton* (1830), 1 Mood C O 255, where a bill purported to be accepted by A B, draper, Birmingham, upon A B's evidence that he knew no other draper at Birmingham of his name, it was held there was evidence for the jury that he was the only draper in Birmingham of that name (*R v White* (1861), 2 F & F 554, see also *R v King* (1832), 5 C & F 123). If a bill purports to be accepted by A B, and A B on being shown the bill says it is a "good bill," this is evidence for the jury that A B wrote the acceptance (*R v Hevey* (1782), 1 Leach, 232).

(h) *R v Rogers* (1838), 8 C & P 629, *R v Mitchell* (1844), 1 Den 282, n. In

is immaterial that the person writing such acceptance may believe either that he will be able to pay the bill or that the person defrauded will refrain from prosecuting (i). But authority may be implied from acts, and a person who signs another person's name on a bill believing upon reasonable grounds that he has authority is not guilty of forgery (k).

It is forgery to indorse a bill by procuration under a false and fraudulent assumption of authority so to indorse it (l).

If a person holding a blank cheque or acceptance with authority to fill it up for a certain amount fills it up for a larger amount, he commits forgery (m), even though he believes such larger amount to be due to him from the owner of the cheque (n).

(iv) *Exchequer Bills etc.*

SECT. 4.  
Forgery.

**1431** Everyone is by statute (o) guilty of felony who with intent to defraud forges or alters or knowingly utters, disposes, or puts off with knowledge that it is forged or altered any Exchequer bill, including a Treasury bill (p), and a war bond (q), Exchequer bond or Exchequer debenture, or indorsement thereon, or assignment thereof, or any receipt or certificate for interest accruing thereon.

Forging  
Exchequer  
bills etc.

The punishment for such offence is penal servitude for life or for any period not less than three years, or imprisonment for not more than two years, with or without hard labour (r).

**1432** Everyone is by statute (s) guilty of felony who without lawful authority or excuse (t) makes or causes to be made or assists in making, or knowingly has custody or possession of (1) any frame, mould, or instrument having therein any words, letters, figures, marks, lines, or devices, peculiar to and appearing in the substance of any

Making etc  
instruments  
etc for  
forging  
Exchequer  
bills etc.

the case of forgery of a receipt it was held sufficient if the prisoner by letter directed his innocent agent that he was "at liberty" to sign the name of a third person (*R v Clifford* (1841), 2 Car & Kir 202).

(i) *R v Forbes* (1855), 7 C & P 224, *R v Beard* (1837), 8 C & P 143. See intent to defraud, p 713, *ante*. On a charge of uttering a forged bill it is immaterial that the bill has since been paid by the prisoner, if the offence has been completed at the time of uttering (*R v Deach* (1850), 9 C & P 499).

(k) *R v Beard*, *supra*, at p 150, *R v Forbes*, *supra*. The intimacy of the parties, and the fact that the prisoner's act has been ratified on a previous occasion may be taken into account (*R v Parish* (1837), 8 C & P 94).

(l) Forgery Act, 1861 (24 & 25 Vict c 98), s 24. Before that Act it was not forgery, see *R v White* (1847), 2 Car & Kir 404.

(m) *R v Hart* (1836) 7 C & P 652, *R v Bateman* (1845), 1 Cox, O C 186, *R v Wilson* (1847), 2 Car & Kir 527. In all cases there must be the intent to defraud. As to evidence of the intent, see p 380, *ante*, and p 764, *post*.

*R v Wilson* (1847), 2 Car & Kir 527, and intent to defraud, p 713, *ante*.

(o) Forgery Act, 1861 (24 & 25 Vict c 98), s 8.

(p) Treasury Bills Act, 1877 (40 & 41 Vict c 2), s 10.

(q) Under the War Loan Act, 1900 (War Loan Act, 1900 (63 & 64 Vict c 2), s 4 (3)).

(r) Forgery Act, 1861 (24 & 25 Vict c 98), s 8, Exchequer Bills and Bonds Act, 1866 (29 & 30 Vict c 25), ss 15, 25. Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions.

(s) Forgery Act, 1861 (24 & 25 Vict c 98), ss 9, 10.

(t) The onus of proof of such authority or excuse in each case lies on the party accused (ss 9, 10).

**SECT 4**  
**Forgery**

paper provided or to be provided or used for Exchequer bills (*a*), bonds, or debentures (*b*); (2) any machinery for working any threads into the substance of any paper or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads, or devices, or (8) any plate peculiarly employed for printing such exchequer bills, bonds, or debentures, or (4) any die or seal peculiarly used for preparing any such plate or for sealing such Exchequer bills, bonds, or debentures as aforesaid, (5) any plate, die, or seal intended to imitate any such plate, die, or seal as aforesaid (*c*), (6) any paper in the substance of which shall appear any such words, letters, figures, marks, lines, threads, or other devices as aforesaid, or any part of such words etc intended to imitate such words etc (*d*), also every-one who (7) causes or assists in causing such words, letters, figures, marks, lines, threads, or other devices, or parts thereof, intended to imitate the same to appear in the substance of any paper whatever (*e*), or (8) takes or assists in taking any impression of any such plate, die, or seal as aforesaid (*e*)

The punishment for any such offence is penal servitude for seven years, or for any period not less than three years, or imprisonment for any period not exceeding two years, with or without hard labour (*f*)

Purchase of  
paper  
provided for  
Exchequer  
bills etc.

**1433** Everyone is by statute (*g*) guilty of misdemeanour who without lawful authority or excuse (*h*) purchases or receives or knowingly has custody or possession of (1) any paper manufactured or provided by or under authority of the Inland Revenue Commissioners or Commissioners of the Treasury for the purpose of being used as Treasury bills (*i*), war bonds (*k*), Exchequer bills, bonds, or debentures, before such paper shall have been duly stamped, signed, and issued for public use, (2) any such plate, die or seal as aforesaid

The punishment for such offence is imprisonment for any term not more than five nor less than three years with or without hard labour (*l*)

(*a*) The term "Exchequer bill" includes Treasury bills (Treasury Bills Act, 1877 (40 & 41 Vict c 2), s 10, war bonds (War Loan Act, 1900 (63 & 64 Vict c 2), s 4 (*d*)), and Metropolitan bills (Metropolitan Board of Works (Money) Act, 1883 (46 & 47 Vict c 27), s 21)

(*b*) Forgery Act, 1861 (24 & 25 Vict c 29), s 9.

(*c*) *Ibid*

(*d*) *Ibid*, s 10

(*e*) *Ibid*

(*f*) *Ibid* ss 9, 10, as altered by the Penal Servitude Act, 1891 (54 & 55 Vict c 60) s 1, see also the Exchequer Bills and Bonds Act, 1866 (29 & 30 Vict c 25) ss 20, 21, 25, which deals with the manufacturing and unlawful possession of paper, plates etc intended to imitate those used for Exchequer bills. The offence is not triable at quarter sessions, but see Quarter Sessions Act, 1842 (5 & 6 Vict c 38), s 1

(*g*) Forgery Act, 1861 (24 & 25 Vict c 98), s 11

(*h*) The onus of proof of such authority or excuse lies on the party accused (*ibid*, s 11)

(*i*) Treasury Bills Act, 1877 (40 & 41 Vict c 2), s 10

(*k*) War Loan Act, 1900 (63 & 64 Vict c 2), s 4 (3)

(*l*) Forgery Act, 1861 (24 & 25 Vict c 98) s 11



**1434** Every person is by statute (m) guilty of felony who with intent to defraud forges, alters, or offers, utters, disposes of, or puts off, knowing that it is forged or altered, any bond commonly called an East India bond, or any bond, debenture, or security issued or made under any Act passed or to be passed relating to the East Indies, or any indorsement thereon or assignment thereof

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**Forgery.**  
Forging East  
India bond.

The punishment of this offence is penal servitude for life or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (n)

**1435** Any person is by statute (o) guilty of felony who fraudulently forges or alters or offers, utters, disposes of, or puts off, knowing that it is forged or altered, any debenture issued under any lawful authority whatsoever either within the King's dominions or elsewhere

Forging  
debentures

The punishment for this offence is penal servitude for fourteen years or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (p)

(v) *Deeds etc*

**1436** Everyone is by statute (q) guilty of felony who, with intent to defraud (r), commits any of the following acts (1) forges or alters any deed (s), (2) forges or alters any bond or writing

Forging  
deeds etc.

(m) Forgery Act, 1861 (24 & 25 Vict c 98), s 7

(n) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions

(o) Forgery Act, 1861 (24 & 25 Vict c 98), s 26 As to the meaning of 'debenture' see *British India Steam Navigation Co v Inland Revenue Commissioners* (1881), 7 Q B D 165, *Edmonds v Blaina Furnaces Co* (1887), 38 Ch D 215, *Levy v Abercrombie Slate and Slab Co* (1887), 37 Ch D 280

(p) Forgery Act, 1861 (24 & 25 Vict c 98), s 26, Penal Servitude Act, 1891 (54 & 55 Vict c 69), Statute Law Revision (No 2) Act 1893 (56 & 57 Vict c 54) The words 'with intent to defraud' are omitted from this section and 'fraudulently' is used instead, as to which, see *R v L'oumer* (1872), 12 Cox, C C 235 The offence is not triable at quarter sessions

(q) Forgery Act, 1861 (24 & 25 Vict c 98), s 20

(r) But not necessarily to defraud the person whose name is forged (*R v Trenfield* (1858), 1 F & F 43)

(s) Forgery Act, 1861 (24 & 25 Vict c 98), s 20 For the meaning of a deed within this statute see *R v Morton* (1873), L R 2 C C R 22, where it was held that a letter of orders under the seal of a bishop was not a deed for the purpose of this section "Any instrument delivered as a deed which either itself passes an interest or property or is in affirmation or confirmation of something whereby an interest or property passes is a deed" (per BOVILL, C.J., at p 27) *Quære* whether the probate of a will is a deed (per BLACKBURN, J., at p 28) A power of attorney under seal is a deed (*ibid*, *R v Lyon* (1813), Russ. & Ry 250, *R v Fauntleroy* (1824), 1 C & P 421, see also Forgery Act, 1861 (24 & 25 Vict c 98), ss 2, 4

It is forgery under s. 20 to make a deed fraudulently with a false date, when the date is a material part of the deed, although the deed is in fact made by and between the persons by and between whom it purports to be made (*R v Ritsom* (1869), L R 1 C C R. 200, and see *Re Cooper, Cooper v Vesey* (1882), 20 Ch D 611, C A, where a son who was heir-at-law of his father and co-executor and co-trustee under his father's will alone executed deeds in his own name as absolute owner, and it was held that such deeds were forgeries, see per LINDLEY, L.J., at p. 634) It is no defence to an indictment for forgery of a deed that the deed is not executed in compliance with the directory provision of a statute, if

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**Forgery.**

obligatory (a), or assignment of such bond or writing obligatory, or (3) knowingly utters, disposes of, or puts off with knowledge that it is forged or altered, any forged or altered deed or bond or writing obligatory, or assignment of such bond or writing obligatory (b), (4) forges any name, handwriting, or signature purporting to be that of an attesting witness to a deed or bond or writing obligatory, (5) offers, utters, disposes of, or puts off any deed, bond, or writing obligatory, having a name, handwriting, or signature so forged, with knowledge that it is forged (c)

The punishment for such offence is penal servitude for life or for any period not less than three years, or imprisonment for any period not exceeding two years, with or without hard labour (d)

Forging will.

**1437** Everyone is by statute (e) guilty of felony who with intent to defraud (f), forges or alters any will, testament, codicil, or testamentary instrument, whether or no such instrument be designated by any special name in any statute, or offers, utters, disposes of or puts off any such instrument knowing it to be forged or altered

The punishment is the same as in the case of the last-mentioned offence (g)

It is not necessary to constitute this offence that the person whose will is forged should be deceased (h), or should ever have existed (i)

the non-compliance with such provision does not make the deed void (*R v Lyon* (1813), Russ & Ry 255) *Aliter*, it seems, if the deed as executed would be wholly void

(a) See as to an administration bond *R v Barber* (1844), 1 Car & Kir 434. In *R v Dunnett* (1792), 2 Leach, 381, on the construction of the words "bond, writing obligatory" in the Perjury Act, 1728 (2 Geo 2, c 23), s 1, it was held that a bond was rightly described as a "bond and writing obligatory," although it had no condition with a penalty or defeasance attached to it. Any security (other than debenture stock) issued under the Local Loans Act, 1875 (38 & 39 Vict c 83), is a writing obligatory within this section: see *ibid*, s 32

(b) See note (a), *supra*. Forgery Act 1861 (24 & 25 Vict c 98), s 20. It is forgery to put a seal fraudulently to a document which is invalid without seal after such document has been signed (or marked), but it is not forgery to induce a person to execute a deed by misrepresenting its legal effect (*R v Collins* (1843), 2 Mood & R 461, 466, compare *R v Chadwick* (1844), 2 Mood & R 345). Where a bond is joint and several, an indictment lies for the forgery of one signature, although the other signature is genuine (*R v Richards* (1844), 1 Cox, C C 62)

(c) Forgery Act, 1861 (24 & 25 Vict c 98), s 20

(d) *Ibid*, as altered by the Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions

(e) Forgery Act, 1861 (24 & 25 Vict c 98), s 39

(f) A prisoner in a case tried before the statute (*R v Tufte* (1848), 3 Cox, C C 160, C. O R.) was proved to have forged the will of his father, but in the absence of proof that any person had been defrauded thereby, it was held that he could not be convicted of intent to defraud any person. See intent to defraud, *ante*

(g) Forgery Act, 1861 (24 & 25 Vict c 98), s 39, and see note (d), *supra*

(h) The offence consists in the fraudulent making of the will, not in the legal effect of the forgery (*R v Coogan* (1787), 2 East, P C 948, *R v Stirling* (1773), 1 Leach, 99)

(i) *R v Avery* (1838), 8 C & P 396 (under the corresponding section (s 3) of Forgery Act, 1830 (11 Geo 4 & 1 Will 4, c 66)). The offence is none the less committed, although the correct Christian name of the supposed testator is not signed (*R v Fitzgerald* (1741), 1 Leach, 20). The rule which prohibits the giving in evidence of documents placed in a solicitor's hands in professional

(vi) *Forging the King's Seals.*

## SECT 4

**Forgery**Forging the  
King's seals.

**1438** Everyone is by statute (*l*) guilty of felony, (1) who forges or counterfeits any of the King's seals or the stamp or impression thereof, or (2) who utters, knowing it to be forged or counterfeited, any such seal, stamp, or impression (or any forged or counterfeited stamp or impression apparently intended to resemble such stamp or impression), or (3) who forges or alters, or utters, knowing it to be forged or altered, any document or instrument bearing such stamps or impressions.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment not exceeding two years with or without hard labour (*h*) These offences are not triable at quarter sessions (*l*).

(vii) *Records, Processes of Court, and Instruments of Evidence*

**1439** A person is guilty by statute (*m*) of felony who with intent to defraud (*n*) commits any of the following offences —

Forging  
record of  
court etc.

(1) Forges or fraudulently alters or knowingly offers, utters, disposes of, or puts off with knowledge that it is forged, any record or other original document of any court of record or court of equity or Court of Admiralty in England or Ireland, or any document or writing or copy thereof intended to be used as evidence in any such court (*o*)

(2) Being a clerk of any court (whether of record or not) or other officer having custody of the records (*p*) of any such court, or the deputy of any such clerk or officer, utters any false copy or certificate of any record knowing such copy etc to be false, or not being such

confidence does not apply to the case of a forged will given by a prisoner to his solicitor ostensibly for the purpose of seeking professional advice but in reality with the intention that the solicitor shall act upon it, such will may accordingly be called for and read (*R v Jones* (1846), 1 Den 166, see also *R v Tufts* (1848), 3 Cox, C C 160, 162, 163, C C R, and *R v Farley* (1846), 2 Car & Kir 313, *R v Avery* (1838), 5 C & P 596). Unrevoked probate of a will is not conclusive evidence of its validity, so as to be a bar to a prosecution for forgery of the will (*R v Buttery* (1818), Russ & Ry 342, 343, n). Where persons were charged jointly with procuring another person to utter a forged will, and the evidence showed no joint act but only separate acts, it was held nevertheless that all might be convicted (*R v Barber and Others* (1844), 1 Car & Kir 442)

(*h*) Forgery Act, 1861 (24 & 25 Vict c 98), s 1

(*l*) Quarter Sessions Act, 1841 (5 & 6 Vict c 38), s 1

(*m*) Forgery Act, 1861 (24 & 25 Vict c 98), ss 27—29

(*n*) Though the words "with intent to defraud" do not appear in ss 27—29 of the Forgery Act, 1861, they are imported into s 28 (and similarly, it is apprehended, into ss 27 and 29) from the common law definition of forgery, and must be alleged in the indictment (*R v Fowner* (1872), 12 Cox, C C 230)

(*o*) Forgery Act, 1861 (24 & 25 Vict c 98), s 27. The documents specified are any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognisance, *cognovit actionem*, warrant of attorney, bill, petition, process, notice, rule, answer, pleading, report, or decree (*ibid*, s. 27)

(*p*) "Records" include official documents kept as records for the purpose of the court, and not necessarily connected with litigation; but the register of ordinations is not the record of a bishop's court (*R v Etheridge* (1901), 19 Cox, C C 676).

SECT. 4  
Forgery

clerk, officer or deputy, signs or certifies any copy or certificate of any record as such clerk, officer or deputy (g)

(3) Forges or fraudulently alters or utters etc with knowledge that it is forged etc any copy or certificate of any record (r) which is forged etc, or utters etc any copy of a certificate of a record which has thereon a false or forged name, handwriting, or signature with knowledge that the name etc is false etc (s)

(4) Being a clerk, officer, or deputy having custody of the records of a court where an offender has been convicted, utters a false certificate of indictment and conviction for a felony, or not being such clerk etc utters any such certificate with a false or counterfeit signature (t)

(5) Forges the seal of any court of record (a)

(6) Forges or fraudulently alters any process (b) of any court other than a court of record (c), or a court of equity, or a court of Admiralty in England or Ireland, or serves or enforces any forged process (b) of any court whatsoever, knowing that it is forged, or delivers or causes to be delivered to any person any paper falsely purporting to be such process (d) or a copy thereof, or any judgment, decree, or order of any court of law or equity or a copy thereof, or knowing that such process is false acts or professes to act under any such false process (e)

Forgery Act, 1861 (24 & 25 Vict c 98), s 28

As to records, see p 735, *ante*

Forgery Act, 1861 (24 & 25 Vict c 98), s 28

(t) Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 11. There are similar provisions as to forging or uttering a certificate of an acquittal under the Crown Cases Act, 1818 (11 & 12 Vict c 78), s 6, but the maximum sentence of penal servitude for such an offence is ten years (*ibid*, s 6)

(a) Forgery Act, 1861 (24 & 25 Vict c 98), s 28, see also the Inferior Courts Act 1844 (7 & 8 Vict c 19), s 5, the Court of Probate Act, 1857 (20 & 21 Vict c 77), s 28 the County Courts Act 1888 (51 & 52 Vict c 43), s 160

(b) An affidavit order is a "process" (*R v Pinner* (1872), 12 Cox, C C 230)

(c) As to forging the process of a county court see also the County Courts Act, 1888 (51 & 52 Vict c 43), s 180, which is similarly worded and includes "acting or professing to act under any false colour or pretence of the process or authority" of the court, it was held under the corresponding section of an older County Court Act, 1846 (9 & 10 Vict c 93), s 57, that "acting or professing to act" applies to the use of false instruments and not to mere false representations as to authority (*R v Myott* (1853), 6 Cox C C 400)

(d) An ordinary notice to produce does not "purport" to be a process of the court by reason of any heading which may be put to it, or by reason that it may have been intended to be thought such (*R v Castle* (1857), 7 Cox, C C 375, C C R)

(e) Forgery Act, 1861 (24 & 25 Vict c 98), s 28, and see the Inferior Courts Act, 1844 (7 & 8 Vict c 19), s 5, and *R v Ripper* (1897) 32 L J 350, *R v Myott, supra*. Where a prisoner filled up a blank form of summons, and signed it "W G, Registrar of the T Court," and indorsed a notice that unless the claim were paid by a certain day an execution warrant would be issued, it was held that he had professed to act under a false colour or pretence of the T Court, within the Act of 1846 (9 & 10 Vict c 93), s 57 (since repealed) (*R v Richmond* (1859), 8 Cox, C C 200, C C R). It was sufficient under this Act if the prisoner pretended to act under the process of the county court, though, in fact, the document was not a county court document, and bore no resemblance thereto (*R v Evans* (1857), 7 Cox, C C 293, C C R., but see *R v Castle, supra*). As to the case of a county court process irregularly issued in blank, to be subsequently filled in, see *R v Collier* (1831), 5 C & P 160

(7) Forges or fraudulently alters or utters etc with knowledge that is forged etc any instrument which is or may be made evidence, by any Act passed or to be passed, and for the forgery or uttering of which no punishment is provided in the Forgery Act, 1861 (*f*)

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Forgery.

The punishment for any such offence is penal servitude for not more than seven years or for not less than three years, or imprisonment for not more than two years with or without hard labour (*g*).

**1440** Everyone is by statute (*h*) guilty of a felony who —

Falsely  
certifying  
copy of  
record etc

(1) Belonging to or being employed in the Public Record Office certifies any writing as a true and authentic copy of a record in the custody of the Master of the Rolls with knowledge that such writing is false up a material part

(2) Counterfeits the signature of an assistant record keeper for the purpose of counterfeiting a certified copy of a record, or forges or counterfeits the seal of the Public Record Office

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*i*)

**1441** Every person is by statute guilty of felony who —

Forging of  
seal etc of  
certificate

(1) Forges the seal, stamp, or signature of any certificate, official or public document, or document or proceeding of any corporation, joint-stock or other company, or of any certified copy of any document, bye law, entry in any register or other book, or other proceeding, if such certificate etc or certified copy is receivable in evidence under the Evidence Act, 1815 (*h*),

(2) Tenders in evidence any such certificate etc with a counterfeit seal, stamp, or signature with knowledge that such seal etc is counterfeit (*l*),

(3) Forges the signature of any judge of the superior courts to any order, decree, certificate, or other judicial or official document (*m*),

(4) Tenders in evidence any such order etc with a counterfeit signature with knowledge that it is counterfeit (*n*),

(5) Prints any copy of any private Act or of the journals of either House of Parliament which falsely purports to have been printed by the printers to the Crown or to either House of Parliament (*o*),

(6) Tenders in evidence any such copy with knowledge that it was not printed by the person by whom it purports to have been printed (*p*)

(*f*) 24 & 25 Vict c 98, s 29 The instrument may be written, or printed, or partly written and partly printed.

(*g*) *Ibid*, ss 27—29, Penal Servitude Act, 1891 (54 & 55 Vict c 64), s 1 The offences are not be triable at quarter sessions

(*h*) Public Record Office Act, 1838 (1 & 2 Vict c 94), s 19, see ss 8, 20

(*i*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 These offences are not triable at quarter sessions

(*k*) 8 & 9 Vict c 113, see s 4

(*l*) *Ibid*, s 4

(*m*) *Ibid*, s 4

(*n*) *Ibid*, s 4

(*o*) *Ibid*, s 4

(*p*) *Ibid*, s 4 These offences are not triable at quarter sessions

**SECT 4**  
**Forgery**

The punishment for these offences is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour for not more than two years (*q*)

**Forgery of evidence.**

**1442** Everyone is by statute (*r*) guilty of felony who —

(1) Forges the seal, stamp, or signature of any document mentioned or referred to in the Evidence Act, 1851,

(2) Tenders in evidence any such document with a counterfeit seal etc with knowledge that such seal etc is counterfeit

The punishment for these offences is penal servitude for not more than seven nor less than three years, and imprisonment with or without hard labour for not more than two years (*s*)

**Forging signatures of probate registrar etc**

**1443** Everyone is by statute (*a*) guilty of felony who —

(1) Forges the signature of any probate registrar or district registrar or any commissioner for taking oaths (*a*),

(2) Forges the seal used in the probate branch of the Probate, Divorce and Admiralty Division of the High Court of Justice (*b*),

(3) Knowingly uses or concurs in using any such counterfeit signature or seal or tenders in evidence any document with such counterfeit signature or seal with knowledge that it is counterfeit (*c*)

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*)

**False copy of proclamation etc**

**1444** Every person is by statute (*e*) guilty of felony who —

(1) Prints any copy of any proclamation, order, or regulation which falsely purports to have been printed by the Government printer or under the authority of any British colony or possession (*e*),

(2) Tenders in evidence any copy of any such proclamation etc falsely purporting to have been printed as aforesaid with knowledge that it was not so printed (*f*),

(3) Forges or tenders in evidence with knowledge that it is forged any certificate authorised by the Documentary Evidence Act,

8 & 9 Vict c 113, s 4, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1  
Evidence Act, 1851 (14 & 15 Vict c 99), s 17

*Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The documents mentioned are—foreign and colonial acts of state, judgments, decrees, orders, and other judicial proceedings of any court of justice in any foreign state or British colony, and affidavits, pleadings, and other legal documents deposited in any such court (s 7), apothecaries' certificates (s 8), registers of British vessels and certificates of registry (s 12, now repealed), certified copies of records of a previous conviction or acquittal (s 13), examined or certified copies of public documents admissible in evidence on production from the proper custody (Evidence Act, 1851 (14 & 15 Vict c 99), s 14) These offences are not triable at quarter sessions

(a) Court of Probate Act, 1857 (20 & 21 Vict c 77), s 28, see Judicature Act, 1873 (36 & 37 Vict c 66), ss. 16, 34

(b) *Ibid*.

(c) *Ibid*

(d) *Ibid*., Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1. This offence is not triable at quarter sessions.

(e) Documentary Evidence Act, 1868 (31 & 32 Vict c. 37), s. 4 (1).

(f) *Ibid*

SECT. 4.  
**Forgery.**

1868 (g), to be annexed to a copy of or extract from any proclamation, order, or regulation (h);

(4) Prints any copy of any Act, proclamation, order, regulation, royal warrant, circular, list, gazette, or document falsely purporting to be printed under the superintendence or authority of His Majesty's Stationery Office (i),

(5) Tenders in evidence any copy falsely purporting to have been printed as aforesaid with knowledge that it was not so printed (i),

(6) Forges, counterfeits, or fraudulently alters the seal or signature of any person authorised under the Commissioners for Oaths Act, 1889 (k), to administer an oath,

(7) Tenders in evidence or otherwise uses an affidavit having any seal or signature so forged or counterfeited or fraudulently altered with knowledge that it is forged etc (l),

(8) Forges the signature of a Master in Lunacy or forges or counterfeits the seal of the office of such Master (m),

(9) Knowingly concurs in using any such forged or counterfeited signature or seal, or tenders in evidence any document with such false or counterfeited signature or seal with knowledge that such signature or seal is false or counterfeited (n)

The punishment for these offences is penal servitude for not more than seven and not less than three years, or imprisonment with or without hard labour for not more than two years (n)

**1445** Every person is by statute (o) guilty of felony who with intent to defraud forges or alters or utters etc with knowledge that it is forged etc any summons, conviction, order, or warrant of any justice of the peace, or any recognisance purporting to have been entered into before any such justice or other officer authorised to take it, or any examination, deposition, affidavit, affirmation, or solemn declaration taken or made before such justice.

Forging  
summons etc  
of justice of  
the peace.

The punishment for this offence is penal servitude for a term not exceeding five years or for not less than three years, or imprisonment with or without hard labour for a term not exceeding two years (p).

**1446** Every person is by statute guilty of felony who without lawful authority or excuse in the name of any other person acknowledges any recognisance of bail or any *cognovit actionem* or

Falsely  
acknowledg  
ing recog  
nizance

(g) 31 & 32 Vict c 37

(h) *Ibid*, s 4

(i) Documentary Evidence Act, 1882 (45 Vict c 9), s 3

(k) 52 Vict c 10

(l) *Ibid*, s 8

(m) Lunacy Act, 1890 (53 Vict c 5), s 147.

(n) Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), s 4 (1), Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Documentary Evidence Act, 1882 (45 Vict. c 9), s 3, Commissioners for Oaths Act, 1889 (52 Vict c 10), s 8; Lunacy Act, 1890 (53 Vict c 5), s 147, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1 These offences are not triable at quarter sessions

(o) Forgery Act, 1861 (24 & 25 Vict. c 98), s 32

(p) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

## SECT 4

## Forgery

judgment, or any deed or other instrument before any court, judge, or other person lawfully authorised in that behalf (q).

The punishment is the same as for the last-mentioned felony, except that the maximum term of penal servitude is seven years (r)

Forging  
seal or  
signature  
under  
Municipal  
Corporations  
Act, 1862

**1447** Every person is by statute (s) guilty of a misdemeanour who —

(1) Forges the seal or signature affixed or subscribed to a bye-law made under the Municipal Corporations Act, 1882 (a), or the signature subscribed to any minute of proceedings of a municipal borough council under that Act,

(2) Tenders in evidence any such document with a false or counterfeit seal or signature knowing that it is false or counterfeit

The punishment for these offences on conviction is imprisonment with or without hard labour for not more than two years (b)

Forging court  
roll etc

**1448** Every person is by statute (c) guilty of felony who with intent to defraud forges or alters or offers, utters etc, with knowledge that it is forged or altered, any court roll or copy of any court roll relating to any copyhold or customary estate

The punishment for this offence is penal servitude for life or for a term not less than three years, or imprisonment with or without hard labour for a term not exceeding two years (d)

Forging  
memorial etc  
under Acts  
for registry  
of deeds

**1449** Every person is by statute (e) guilty of felony who —

(1) Forges or fraudulently alters or offers, utters etc, with knowledge that it is forged or fraudulently altered, any memorial, affidavit, affirmation, entry, certificate, indorsement, document, or writing made or issued under the provisions of any Act passed or to be passed for or relating to the registry of deeds (e),

(2) Forges or counterfeits the seal of any office for the registry of deeds, or any stamp or impression of any such seal (f),

(3) Forges any name, handwriting, or signature purporting to be the name, handwriting, or signature to any such memorial etc required or directed to be signed by or by virtue of any Act passed or to be passed (g),

(4) Offers, utters etc any such memorial or other writing having any such forged stamp or impression of any such seal or any such forged name etc, with knowledge that it is forged (g)

(g) Forgery Act, 1861 (24 & 25 Vict c 98), s 34

(r) *Ibid.*, s 34 This offence is not triable at quarter sessions

(s) 45 & 46 Vict c 50, s 235

(a) 45 & 46 Vict c 50

(b) *Ibid.*, s 17 This offence is not triable at quarter sessions On summary conviction the punishment is imprisonment for any term not exceeding three months (*ibid.*)

(c) Forgery Act 1861 (24 & 25 Vict c 98), s 30

(d) *Ibid.*, s 30, Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s 1 This offence is not triable at quarter sessions

(e) Forgery Act 1861 (24 & 25 Vict c 98), s 31, see also Land Transfer Act, 1875 (38 & 39 Vict c 87), s 100 As to the Acts for registering deeds, see title **REAL PROPERTY AND CHATELS REAL**.

(f) Forgery Act 1861 (24 & 25 Vict c 98), s 31

(g) *Ibid.* The section makes no reference to intent to defraud, but it is none the less necessary to allege and prove such intent (see p 713, *ante*)



The punishment for these offences is penal servitude for a term not exceeding fourteen years or for not less than three years, or imprisonment with or without hard labour for any term not exceeding two years (*h*)

SECT. 4.  
Forgery.

**1450** Every person is by statute (*i*) guilty of a misdemeanour who fraudulently procures or is privy to the fraudulent procurement of any entry on the land register established under the Land Transfer Act, 1875, or of any erasure from such register or alteration of the register (*h*)

Fraudulently  
procuring  
entry on land  
register.

The punishment for such offence is imprisonment with or without hard labour for any term not exceeding two years, or such fine not exceeding £500 as the court before which the offender is tried may award (*h*)

**1451** Everyone is by statute (*l*) guilty of felony who forges, alters, or utters a certificate or document relating to land or title under the Declaration of Title Act, 1862 (*m*)

Forging  
certificate  
under  
Declaration  
of Title Act,  
1862

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment for any term not more than two years with or without hard labour (*n*).

**1452** Everyone is by statute (*o*) guilty of a misdemeanour who, being an officer authorised or required by the Evidence Act, 1851 (*p*), to furnish any certified copies or extracts, wilfully certifies a document as being a true copy or extract when the same is not a true copy or extract

False  
certificate.

The punishment for this offence is imprisonment without hard labour for not more than eighteen months (*q*).

**1453** Everyone is by statute (*r*) guilty of felony who —

(1) Unlawfully destroys, defaces, or injures or causes or permits to be destroyed, defaced, or injured the whole or part of any register of births, baptisms, marriages, deaths, or burials authorised or required by law to be kept in England or Ireland, or the whole or part of any certified copy of the whole or part of such register (*i*),

Destroying  
etc register  
of births etc

(2) Forges or fraudulently alters in any such register or part of it any entry relating to any birth etc., or any certified copy of such register or of any part thereof (*s*),

(*h*) Forgery Act, 1861 (24 & 25 Vict c 98), s 31, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(*i*) 38 & 39 Vict c 87, s 5

(*k*) *Ibid*, s 100 This offence is not triable at quarter sessions

(*l*) Declaration of Title Act, 1862 (25 & 26 Vict c 67), s 45

(*m*) 25 & 26 Vict c 67

(*n*) *Ibid*, s 45, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(*o*) Evidence Act, 1851 (14 & 15 Vict c 99), s 15

(*p*) Evidence Act, 1851 (14 & 15 Vict c 99)

(*q*) *Ibid*, s 15 This offence is not triable at quarter sessions

(*r*) Forgery Act, 1861 (24 & 25 Vict c 98), s 36 As to the register of births etc., see title REGISTRATION OF BIRTHS AND DEATHS, see too Non-parochial Registers Act, 1840 (3 & 4 Vict c 92), s 8, Births and Deaths Registration Act, 1858 (21 & 22 Vict c 25), s 3, Burial Act, 1857 (20 & 21 Vict c 81), s 15

(*s*) Forgery Act, 1861 (24 & 25 Vict c 98), s 36 See *R v Bowen* (1841),

**SECT 4**  
**Forgery**

Forging etc  
registers etc

(3) Knowingly and unlawfully inserts or causes or permits to be inserted in such register or any certified copy thereof any false entry of any matter relating to any birth etc (*i*) ;

(4) Knowingly and unlawfully gives any false certificate relating to any birth etc. (*u*) ,

(5) Certifies any writing to be a copy or extract from any such register knowing such writing or the part of such register whereof such copy or extract is given to be false in any material particular (*u*) ,

(6) Forges or counterfeits the seal of or belonging to any register office or burial board (*u*) ,

(7) Utters etc any such register, entry, certified copy, certificate, or seal, or any copy of any entry in any such register with knowledge that it is false (*v*) ,

(8) Knowingly and wilfully inserts or causes or permits to be inserted in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial (*x*) ,

(9) Forges or alters or utters with knowledge that it is forged etc any copy of any such register (*a*) ,

(10) Wilfully signs or verifies any copy of any such register which copy is false in any part with knowledge that it is false (*b*) ,

(11) Unlawfully destroys, defaces, or injures or for any fraudulent purpose takes from its place of deposit or conceals any such copy of any register (*c*)

The punishment for any such offence is penal servitude for life or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*d*)

1 Den 22 As to intent to defraud, see *R v Pinner* (1872), 12 Cox, C C 235 Forgery Act 1861 (24 & 25 Vict c 98), s 36, see also Non parochial Registers Act, 1840 (3 & 4 Vict c 92), s 8, as amended by the Births and Deaths Registration Act, 1858 (21 & 22 Vict c 25), and Burial Act, 1857 (20 & 21 Vict c 81)

(*i*) Forgery Act, 1861 (24 & 25 Vict c 98), s 36 It is not necessary that such entry should be made with intent to defraud, nor is it necessary (where the matter relates to witnessing a marriage) that the marriage should be legal or the witness a necessary witness (*R v Asplin* (1873), 12 Cox, C C 391) As to causing a false entry to be inserted, see *R v Mason* (1848), 2 Car & Kir 622

(*u*) Forgery Act, 1861 (24 & 25 Vict c 98), s 36, see also Non parochial Registers Act, 1840 (3 & 4 Vict c 92), s 8, as amended by Births and Deaths Registration Act, 1858 (21 & 22 Vict c 25) s 3, and Burial Act, 1857 (20 & 21 Vict c 81), s 15

(*v*) Forgery Act, 1861 (24 & 25 Vict c 98), s 36 If A. hands a forged certificate of a marriage to B, an accomplice, in order that she may show it to C, this is not an uttering by A within the section, even though B does show it to C (*R v Heywood* (1847), 2 Car & Kir 352), but *quære* whether it is not a disposing of or putting off (see *R v Palmer* (1804), Russ & Ry 72).

(*x*) Forgery Act, 1861 (24 & 25 Vict c 98), s 37

(*a*) *Ibid*

(*b*) *Ibid*

(*c*) *Ibid*. These words were added to meet the case of *R v Bowen* (1844), 1 Den 22

(*d*) Forgery Act, 1861 (24 & 25 Vict c 98), ss 36, 37, Penal Servitude Act, 1897 (54 & 55 Vict c 69), s 1 These offences are not triable at quarter sessions

**1454.** Everyone is by statute guilty of a misdemeanour who wilfully makes any false certificate or declaration under the Births and Deaths Registration Act, 1874 (*e*), or forges or falsifies any such certificate or declaration or order made under the same Act, or knowingly uses, gives, or sends any such false or forged certificate, declaration, or order as true

SECT 4.  
**Forgery.**

Making false certificate etc under Births and Deaths Registration Act, 1874

The punishment for this offence on conviction on indictment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*f*)

**1455** Everyone is by statute (*g*) guilty of felony who forges or fraudulently alters any licence or certificate for marriage or utters etc any such licence etc with knowledge that it is forged etc

Forging marriage licence.

The punishment for this offence is penal servitude for not more than seven nor less than three years, and imprisonment with or without hard labour for not more than two years (*h*)

**1456** Every person is by statute (*i*) guilty of a misdemeanour who —

Making false entry in registry book of Stationers' Company

(1) Wilfully makes or causes to be made any false entry in the registry book of the Stationers' Company,

(2) Wilfully produces or causes to be tendered in evidence any paper falsely purporting to be a copy of any entry in such book

The punishment for this offence is imprisonment without hard labour, or by fine or both (*k*)

**1457** Any person is by statute guilty of a misdemeanour who —

Making false entry in register under Trade Marks Act, 1905 etc.

(1) Makes or causes to be made a false entry in the register kept under the Trade Marks Act, 1905 (*l*),

(2) Makes or causes to be made a false entry in a register kept under the Patents and Designs Act, 1907 (*m*), or a writing falsely purporting to be a copy of an entry in any such register (*n*),

(3) Produces or tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false (*o*)

The punishment for this offence is imprisonment without hard labour, or fine, or both (*p*)

(*e*) 37 & 38 Vict c 88, see s 40 (2)

(*f*) *Ibid*, s 40 (2), Statute Law Revision (No 2) Act, 1893 (56 & 57 Vict c 54), Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1 This offence is not triable at quarter sessions On summary conviction the punishment is a penalty not exceeding £10 A prosecution or indictment for such offence must be commenced within three years after the commission of such offence (*ibid*, s 46) Any rector, vicar, curate, or officiating minister may correct in the prescribed mode accidental errors in a register (Forgery Act, 1830 (11 Geo 4 & 1 Will 4, c 66), s 21)

(*g*) Forgery Act, 1861 (24 & 25 Vict c 98), s 35

(*h*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1. The offence is not triable at quarter sessions

(*i*) Copyright Act, 1842 (5 & 6 Vict c 45), s 12

(*k*) *Ibid* The offence is not triable at quarter sessions

(*l*) 5 Edw 7, c 15, see *ibid*, s 66

(*m*) 7 Edw 7, c 29

(*n*) *Ibid*, s 89 (1)

(*o*) *Ibid*

(*p*) *Ibid* This offence is not triable at quarter sessions.

## SECT. 4.

## Forgery

Falsifying  
register of  
pharma-  
ceutical  
chemists etc

**1458** Every person is by statute guilty of a misdemeanour who:—

(1) Wilfully makes or causes to be made any falsification in any matter relating to the register of pharmaceutical chemists and chemists and druggists kept under the Pharmacy Act, 1868 (*q*),

(2) Wilfully procures or attempts to procure himself to be registered under the Pharmacy Act, 1852 (*r*), or the Pharmacy Act 1868 (*s*), by making or producing or causing to be made and produced any false or fraudulent representation or declaration, either verbally or in writing (*t*),

(3) Assists any other person in committing these offences (*t*).

The punishment for this offence is fine, or imprisonment for not more than twelve months (*a*)

(viii) *Instruments issued by Public Officers*

Forging  
certificate of  
Inland  
Revenue  
Commis-  
sioners.

**1459** Every person is by statute guilty of felony who with intent to defraud the King or any body politic or corporate or any persons whomsoever —

(1) Forges, counterfeits, or alters or causes or procures to be forged etc, or knowingly or wilfully assists in forging etc any certificate of the Commissioners of Inland Revenue or any other commissioners acting in the execution of the Income Tax Act, 1812 (*b*), or any certificate or receipt which the cashier of the Bank of England or any officer for receipt is by that Act authorised to give on the receipt of any money payable under the Act (*c*),

(2) Utters any such forged etc certificate or receipt (*c*)

The punishment for this offence is penal servitude for a period not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*d*)

Forging  
certificate  
etc of  
paymaster-  
general etc

**1460** Every person is by statute (*e*) guilty of felony who, with intent to defraud,

(1) Forges or alters any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing made or purporting or appearing to be made by the paymaster-general or by his deputy, clerk or officer, or by any officer of any court in England or Ireland, or by any cashier or other officer or clerk of the Bank of England or of Ireland, or by any cashier or other officer or clerk of such bank, or the names or signatures or counter-signatures of the paymaster-general or of any such cashier etc,

(*q*) 31 & 32 Vict c 121

(*r*) 15 & 16 Vict c 56

(*s*) 31 & 32 Vict c 121

(*t*) *Ibid*, s 14

(*a*) *Ibid*. The imprisonment, it seems, is without hard labour; see p 410, ante. This offence is not triable at quarter sessions

(*b*) 5 & 6 Vict c 35

(*c*) *Ibid*, s 181

(*d*) *Ibid*; Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions

(*e*) Forgery Act, 1861 (24 & 25 Vict c 98), s 33, Court of Chancery (Funds) Act 1872 (35 & 36 Vict c 14), ss 4, 12, Judicature Act, 1873 (36 & 37 Vict c 66), s 16

(2) Utters etc. any such certificate etc. knowing that it is forged or altered (*f*).

SECT. 4.  
Forgery.

The punishment for these offences is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*)

**1461** Every person is by statute (*h*) guilty of felony who, with intent to defraud anyone,

Forging name  
etc. of com-  
missioners of  
customs

(1) Knowingly or wilfully forges or counterfeits or causes or procures to be forged etc., or knowingly and wilfully assists in forging etc., the name or handwriting of any commissioner of customs or of any accountant and comptroller-general of customs or of any person acting for them to any draft, instrument, or writing for or in order to the receiving or obtaining any of the money in the hands of the Bank of England on account of such commissioners,

(2) Forges or counterfeits or causes or procures to be forged etc., or knowingly and wilfully assists in forging etc., any draft, instrument, or writing made in form of a draft by such accountant-general or person (*i*),

(3) Utters or publishes such forged draft etc. with knowledge that it is forged (*j*)

The punishment for these offences is penal servitude for a term not exceeding five and not less than three years, or imprisonment with or without hard labour for a period not exceeding two years (*k*).

**1462** Every person is by statute guilty of felony who.—

(1) Makes or causes or procures to be made or aids in making or knowingly has possession of without authority from the Commissioners of Inland Revenue and without lawful excuse any mould or frame or other instrument having any words, figures, marks, or devices peculiar to the paper used by such commissioners for permits or with any part of such words etc. intended to imitate or pass for the same (*l*),

Making or  
instrument  
for copying  
marks etc  
used by  
Inland  
Revenue  
Commissioners.

(2) Without such authority makes etc. any paper in the substance of which such words, figures etc. or any part of them intended to imitate and pass for the same are visible (*m*),

(*f*) See note (*e*), p. 744, *ante*

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 33, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions

(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 28

(*i*) *Ibid*

(*j*) *Ibid.*, s. 28

(*k*) *Ibid.*, s. 28, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions. See also Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 168, which provides for a penalty of £100 for making false declarations or for counterfeiting any document required by the Act etc. This penalty is, it seems, recoverable summarily before justices (see *ibid.*, s. 223, and Sched. C, Counts VI to IX)

(*l*) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3, Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 37. Wherever these words appear in the section, the burden of proving the excuse etc. is on the person accused (Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3)

(*m*) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3.

SECT. 4  
Forgery

Forging  
Inland  
Revenue  
documents

(8) Without such authority knowingly has possession of without lawful excuse any such paper (n),

(1) Without such authority by any act, mystery, or contrivance causes or procures or assists in causing or procuring such words to appear visible in the substance of any paper (o),

(5) Not being duly authorised and appointed in that behalf, engraves, casts, cuts, makes or causes or procures to be engraved etc or aids in engraving etc any plate, type, or other thing in imitation of or to resemble any plate etc made by the direction of such commissioners for the purpose of marking or printing paper to be used for permits (p),

(6) Not being duly authorised etc knowingly has possession without lawful excuse of any such plate etc (q),

(7) Counterfeits or forges or causes or procures to be counterfeited etc or assists in counterfeiting etc any permit or part of a permit, or counterfeits any impression, stamp, mark, figure or device provided or appointed by such commissioners to be put on such permit (r),

(8) Utters, gives or makes use of any counterfeited etc permit knowing it or part of it is counterfeited etc or any permit with any such counterfeited impression etc knowing that the same is counterfeited (s),

(9) Knowingly or willingly accepts or receives any counterfeited etc permit or any permit with such counterfeited impression knowing that the same is counterfeited (t),

(10) Without lawful authority etc makes or causes to be made, or aids in making or knowingly has custody or possession of any paper in the substance of which appear any words etc peculiar to and appearing in the substance of any paper provided or used by such commissioners for receiving the impression of any die or any part of such words etc and intended to imitate or pass for the same or to any such paper used for excise licences (a),

(11) Causes or assists in causing any such words etc or any part of them intended to imitate and pass for the same to appear in the substance of any paper (b)

The punishment for these offences is penal servitude for not more

n) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3

o) *Ibid.*, s. 3

p) *Ibid.*, s. 3, and see s. 2

q) *Ibid.*, s. 3

r) *Ibid.*, s. 4

s) *Ibid.*

t) *Ibid.* There are similar provisions as to forging etc certificates for retailers of spirits under the Liquor Act, 1849 (11 & 12 Vict. c. 121), see *ibid.*, s. 18. It is an offence to forge or counterfeit request notes for permits, or fraudulently to promise permits or to misapply them, the penalty for such an offence is £500, recoverable, it seems, by action (see *Advocate-General v. Grant* (1853), 15 Durl. (Ct. of Sess.) 980), the offence is not made indictable (Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 13)

(a) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 14 (a); Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 12

(b) *Ibid.*, s. 14 (b). The provisions relating to the punishment of offences connected with stamp duties (including those relating to paper and implements used in the manufacture of paper) are applied to similar offences connected with postal orders (see Post Office Act, 1908 (8 Edw. 7, c. 48), s. 60).

than seven nor less than three years, or imprisonment with or without hard labour for any term not exceeding two years (c). SECT. 4.  
**Forgery.**

**1463** Everyone is by statute (d) guilty of a misdemeanour who without lawful authority or excuse purchases or receives or knowingly has in his custody or possession any paper manufactured and provided by or under the direction of such commissioners for the purpose of being used for receiving the impression of any die before such paper shall have been duly stamped and issued for public use, or for the purpose of being used for excise licences, or any plate, die, dandy-roller, mould, or other implement peculiarly used in the manufacture of any such paper Purchasing  
etc paper  
manufactured  
etc by the  
Inland  
Revenue  
Commis-  
sioners.

The punishment for these offences is imprisonment with or without hard labour for a term not exceeding two years (e)

**1464** Every person is by statute guilty of a felony who does or causes or procures to be done or knowingly aids, abets, or assists in doing any of the following acts Forging  
dies etc

(1) Forges a die or stamp used by the Commissioners of Inland Revenue (f),

(2) Prints or makes an impression upon any material from a forged die (g),

(3) Fraudulently prints or makes an impression upon any material from a genuine die (h),

(4) Fraudulently cuts, tears, or in any way removes from any material any stamp with intent that any use should be made of such stamp or any part thereof (i),

(5) Fraudulently mutilates any stamp with intent that any use should be made of any part of such stamp (k),

(6) Fraudulently fixes upon any material or stamp any stamp or part of a stamp which, whether fraudulently or not, has been cut etc or removed from any other material or out of or from any other stamp (l),

(c) Excise Permit Act, 1832 (2 & 3 Will 4, c 16), ss 3, 4, Stamp Duties Management Act, 1891 (54 & 55 Vict c 38), s 14, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 As to possession of forged stamps, see the Stamp Duties Management Act, 1891 (54 & 55 Vict c 38), s 18 (1) As to search warrants by Inland Revenue Commissioners for such stamps, see *ibid*, s. 18 (2) This offence is not triable at quarter sessions

(d) Stamp Duties Management Act, 1891 (54 & 55 Vict c 38), s 15, Revenue Act, 1898 (61 & 62 Vict c 46), s 12 As to paper used for postal orders, see Post Office Act, 1908 (8 Edw 7, c 48), s 60

(e) Stamp Duties Management Act, 1891 (51 & 55 Vict c 38), s 15 This offence is not triable at quarter sessions

(f) *Ibid*, s 13 (1) "Die" includes any plate, type, tool or implement whatever used under the direction of the Inland Revenue Commissioners for expressing or denoting any duty or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that an instrument is duly stamped or is not chargeable with any duty, or for denoting any fee, and also part of any such plate etc (*ibid*, s 27) "Stamp" means as well a stamp impressed by means of a die as an adhesive stamp for denoting any duty or fee (*ibid*, s. 27)

(g) *Ibid*, s. 13 (2)

(h) *Ibid*, s. 13 (3)

(i) *Ibid*, s 13 (4), see *R v Field* (1785), 1 Leach, 383

(k) *Ibid*, s 13 (5)

(l) *Ibid*, s 13 (6), see *R v Smith* (1831), 1 Mood C C 314

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Forgery.

(7) Fraudulently erases or otherwise really or apparently removes from any stamped material any name, sum, date, or other matter thereon written with the intent that any use should be made of the stamp upon such material (*m*),

(8) Knowingly sells or exposes for sale or utters or uses any forged stamp, or any stamp which has been fraudulently printed or impressed from a genuine die (*n*),

(9) Knowingly and without lawful excuse has in his possession any forged die or stamp, or any stamp which has been fraudulently printed etc from a genuine die, or any stamp or part of a stamp which has been fraudulently cut etc or fraudulently mutilated, or any stamped material out of which any name etc has been fraudulently erased or otherwise either really or apparently removed (*o*)

The punishment for these offences is penal servitude for not more than fourteen nor less than three years, and imprisonment with or without hard labour for any term not exceeding two years (*p*)

Forging  
certificate of  
redemption of  
land tax etc

**1465** Anyone is by statute guilty of felony who —

(1) Forges, counterfeits, or alters, or causes or procures to be forged etc, or knowingly or wilfully assists in forging any contract, assignment, certificate, receipt, or attested copy of any certificate made out or purported to be made out by any person authorised by any Act of Parliament touching the redemption or sale of the land tax or of any part thereof (*q*),

(2) Forges etc or causes to be forged etc, or knowingly and wilfully assists in forging etc any register of the birth or baptism or death or burial of any person to be appointed a nominee under the Government Annuities Act, 1829 (*r*), or any copy or certificate of such register, or the name of any witness to any such certificate, or any affidavit or affirmation required to be taken for any of the purposes of that Act, or any certificate of any justice etc of any such affidavit etc having been taken before him, or any certificate of any person authorised by the Act to grant any certificate of the life or death of any nominee (*s*),

(3) Forges etc or causes to be forged etc, or knowingly or wilfully assists in forging etc any declaration, warrant, order, or

(*m*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c 38), s 13 (7), see *R v Allday* (1837), 8 O & P 136

(*n*) *Ibid.*, s 13 (8) As to uttering, see *R v Collicott* (1812), Russ. & Ry 212

(*o*) *Ibid.*, s 13 (9) As to lawful excuse, see *Quikins v Gull*, [1896] 2 Q. B. 310.

(*p*) *Ibid.*, s 13 This offence is not triable at quarter sessions There are similar provisions as to the forging of stamps etc. in the Local Stamp Act, 1869 (32 & 33 Vict. c. 49), but under that Act the maximum period of penal servitude is five years (*ibid.*, s 8), but see Statute Law Revision (No 2) Act, 1893 (56 & 57 Vict. c. 54) There are other offences relating to stamps not indictable, but punishable by a fine (see Stamp Duties Management Act, 1891 (54 & 55 Vict. c 38), ss. 20, 21) As to the making etc. of fictitious stamps in imitation of those used by the Post Office, see Post Office Act, 1908 (8 Edw 7, c 48), ss 64, 65.

(*q*) Land Tax Certificates Forgery Act, 1812 (52 Geo 3, c. 143), s. 6.

(*r*) 10 Geo 4, c 24.

(*s*) *Ibid.*, s. 41



other instrument, or any affidavit or declaration required to be made under the Government Annuities Act, 1832 (*t*), or by the National Debt Commissioners, or under any of the provisions of that Act, or under any authority given them for that purpose (*a*);

SECT. 4.  
Forgery.

(4) Forges etc or causes to be forged etc, or knowingly or wilfully assists in forging etc. any certificate or order of such commissioners, or of any cashier or clerk of the Bank of England, or the name of any person in any transfer of any annuity, or in any certificate, order, warrant, or other instrument for the payment of money for the purchase of any annuity under the provisions of either of the two last-mentioned Acts, or in any transfer or acceptance of such annuity in the books of such commissioners, or in any receipt or discharge for such annuity, or for any payment due or to become due thereon, or in any letter of attorney or other authority or instrument to authorise such transfer etc (*b*),

(5) Wilfully, falsely, and deceitfully personates any true and real nominee or nominees, or wilfully utters or delivers or produces to any person acting under either of the two last-mentioned Acts any forged register or copy of register of any birth, baptism or marriage, or any forged etc declaration, affidavit or affirmation, or with knowledge that it is forged etc, with intent to defraud the King or any person (*c*)

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*)

**1466** Anyone is by statute (*c*) guilty of felony who —

(1) Knowingly and wilfully forges or counterfeits, or assists in forging etc the name or handwriting of the Commissioners of the Treasury, or any of them, to any power of attorney for the sale or transfer of stock, or of the Commissioners of Woods and Forests, to any draft, instrument, or writing for the purpose of obtaining any money in the hands of the Bank of England or of Ireland, or of any private banker, on account of such commissioners (*e*),

Forging  
name of Com  
missioners of  
Treasury to  
any power of  
attorney etc

(2) Forges etc or causes to be forged etc, or knowingly and wilfully assists in forging etc any draft, instrument, or writing in form of a draft made by such Commissioners (*f*),

(3) Utters or publishes any such draft etc with intent to defraud either of the said banks, or any private banker, or any other person (*g*)

(*t*) 2 & 3 Will 4, c 59

(*a*) *Ibid*, s. 19

• (*b*) Government Annuities Act, 1829 (10 Geo 4, c 24), s 41, Government Annuities Act, 1832 (2 & 3 Will 4, c 59), s 19

(*c*) *Ibid*.

(*d*) Land Tax Certificates Forgery Act, 1812 (52 Geo 3, c 143), s 6 There are similar provisions as to the Commissioners of Customs (Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 28, Government Annuities Act, 1829 (10 Geo 4, c 24), s 41, Government Annuities Act, 1832 (2 & 3 Will 4, c 59), Forgery Act, 1861 (24 & 25 Vict c 98), s 48, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1) These offences are not triable at quarter sessions

(*e*) Crown Lands Act, 1829 (10 Geo 4, c 50), s 124

(*f*) *Ibid*, s. 124.

(*g*) *Ibid*

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**Forgery**

The punishment for these offences is penal servitude for not more than seven or less than three years, or imprisonment with or without hard labour for not more than two years (*h*)

**Forging  
naval  
certificates.**

**1467.** Every person is by statute (*i*) guilty of a misdemeanour who —

(1) Fraudulently counterfeits any certificate of service in the King's navy or any instrument purporting to be a protection from such service (*i*),

(2) Fraudulently utters or publishes any such forged certificate or instrument knowing it is forged (*k*),

(3) Fraudulently alters any such certificate or protection duly given (*l*),

(4) Forges or fraudulently alters any extract from a baptismal register, or knowingly utters any false extract from such register, or any false affidavit, certificate, or document in order to obtain from the Admiralty a protection from the King's naval service for himself or any other person (*m*),

(5) Being in possession of a protection lends, sells, or disposes thereof to any other person in order fraudulently to enable such other person to make an unlawful use of it (*n*),

(6) Produces, utters, or makes use of as a protection for himself a protection issued for any other person (*o*)

The punishment for these offences is imprisonment without hard labour, or fine, or both (*p*)

(12) *Forgery with relation to Pensions etc*

**Uttering false  
affidavit to  
obtain  
pension**

**1468** Every person is by statute (*q*) guilty of a misdemeanour who in order to sustain any claim to any pay, wage, allotment, prize money, bounty money, grant, or other allowance in the nature thereof, half pay, pension, or allowance from the Compassionate Fund of the Navy, or other money payable by the Admiralty, or to any effects or money in charge of the Admiralty, or in order to procure any person to be admitted a pensioner as the widow of an officer of the navy—

(1) Offers or utters to any person in the service of the Crown or of the Admiralty any false affidavit with knowledge that it is false,

(2) Makes or subscribes, or offers or utters, to any such person any false written petition, application, statement, answer, certificate, or voucher, or other false writing, with knowledge that it is false (*q*).

(*h*) Crown Lands Act, 1829 (10 Geo 4, c 80), s 124, Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(*i*) Naval Enlistment Act, 1835 (5 & 6 Will 4, c. 24), s 3

(*k*) *Ibid*

(*l*) *Ibid*

(*m*) *Ibid*

(*n*) *Ibid*

(*o*) *Ibid*

(*p*) *Ibid* *Quære* whether hard labour could not be awarded in these cases as for a common law cheat (see Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s 29 This offence is not triable at quarter sessions

(*q*) Admiralty Powers, etc Act, 1865 (28 & 29 Vict c. 124), s 6, ss 40—42

The punishment for these offences on indictment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years, or on summary conviction imprisonment with or without hard labour for not more than six months (*r*).

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**Forgery.**

**1469.** Every person is by statute (*s*) guilty of felony who —

Forging name  
of officer etc.  
entitled to  
pension etc

(1) Forges or counterfeits, or alters, or causes or procures to be forged, or knowingly and willingly assists in forging etc the name of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, grant, share, allowance of money, bounty money, prize money, or relief due or payable or supposed to be due etc for or on account of any service done or supposed to be done by any such officer etc in the King's army or other military service, or the name of any officer, under officer, clerk or servant of the Commissioners of Chelsea Hospital, or of any officer or person in any way concerned in the paying or ordering, directing or causing the payment of the said pension etc (*r*),

(2) Forges etc any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document, or authority whatsoever relating to or anywise concerning the payment or obtaining or claiming any such pension etc (*r*),

(3) Utters or publishes as true or knowingly and willingly assists in uttering etc any such letter of attorney etc with intent to obtain the payment of any such pension etc or with intent to defraud any person (*a*).

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*b*).

**1470** Every person is by statute (*c*) guilty of felony who —

Forging  
minutes etc.  
relating to  
payment of  
pension

(1) Forges, counterfeits, or alters, or causes or procures to be forged etc, or knowingly and willingly assists in forging etc any minute, copy of minute, assignment of pension, superannuation, or other allowance granted under the Pensions Act, 1839 (*c*), or any order, certificate, receipt, document, or authority, whatsoever, relating to the payment of any such pension etc (*d*),

(2) Utters or publishes as true or knowingly etc assists in

50—53 of the Forgery Act, 1861 (24 & 25 Vict c 98), are incorporated with this Act (*ibid*, s 7).

(*r*) *Ibid*, s 6 These offences are not triable at quarter sessions

(*a*) Chelsea and Kilmartin Hospitals Act, 1826 (7 Geo 4, c 16), s 35, Army Prize Money Act, 1832 (2 & 3 Will 4, c 53), s 49 It is not necessary that the pension etc should be actually existing (*R v Pringle* (1840), 2 Mood C C 127)

(*r*) *Ibid*

(*a*) *Ibid*

(*b*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s 1 This offence is not triable at quarter sessions.

(*c*) 2 & 3 Vict c. 51, s 9

(*d*) *Ibid*, s 9

SECT 4  
Forgery

uttering etc with knowledge that it is forged etc any such minute etc, or the name of any pensioner, justice of the peace, guardian, parish or other officer, or any other person authorised or supposed or purporting to be authorised to sign any such minute etc., with intent to obtain or enable any other person to obtain the payment of any such pension etc (e).

The punishment for these offences is penal servitude for not more than seven or less than three years, or imprisonment with or without hard labour for not more than two years (f)

Forging  
seaman's  
pension  
papers.

**1471.** Every person is by statute (g) guilty of a misdemeanour who, for the purpose of obtaining either for himself or for another any pension, payment, or relief from the Merchant Seamen's Fund,

(1) Fraudulently forges or alters, or procures to be forged etc, or assists in forging etc any certificate or other document purporting to show or assist in showing a right to any such pension etc (g),

(2) Fraudulently makes use of any forged etc certificate etc or any certificate etc not belonging to him (h)

The punishment for these offences on indictment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years, or, on summary conviction, imprisonment with or without hard labour for not more than six months (i)

(x) Documents under Merchant Shipping Act, 1894

Forging  
documents  
mentioned in  
the Merchant  
Shipping Act,  
1894.

**1472** Every person is by statute (k) guilty of a felony who —

(1) Forges, or fraudulently alters, or assists in forging etc or procures to be forged etc any of the following documents referred to in the Merchant Shipping Act, 1894 (k) register code (l), builder's certificate (m), surveyor's certificate (n), certificate of registry (o), declaration (p), bill of sale (q), instrument of mortgage (r), or certificate of mortgage or sale (s), or any entry or endorsement required by Part I of that Act (t) to be made in or on any of these documents (u);

(2) Forges the seal, stamp, or signature of any document to which section 695 of the Merchant Shipping Act, 1894 (x), applies,

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- (e) Pensions Act, 1839 (2 & 3 Vict c 51), s 9  
 (f) *Ibid* Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8 Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions  
 (g) Seamen's Fund Winding-up Act, 1851 (14 & 15 Vict c 102), s 55  
 (h) *Ibid*  
 (i) *Ibid* Penal Servitude Act, 1891 (54 & 55 Vict c. 69), s. 1 This offence is not triable at quarter sessions.  
 (k) 57 & 58 Vict c 60.  
 (l) *Ibid.*, s. 5  
 (m) *Ibid.*, s. 10  
 (n) *Ibid.*, s. 6.  
 (o) *Ibid.*, s. 14  
 (p) *Ibid.*, ss 9, 25, 27, 38.  
 (q) *Ibid.*, s. 24  
 (r) *Ibid.*, s. 31.  
 (s) *Ibid.*, s. 39  
 (t) *Ibid.*, ss 19, 49  
 (u) *Ibid.*, ss 50 66  
 (x) Merchant Shipping Act 1894 (57 & 58 Vict c 60), ss 66 and 695 (4)

(3) Tenders in evidence any such document with a false etc. seal etc., with knowledge that it is false etc (a)

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The punishment for these offences is penal servitude for not more than seven nor less than three years, and imprisonment for not more than two years with or without hard labour (b)

**1473** Every person is by statute (c) guilty of a misdemeanour who for the purpose of obtaining either for himself or for any other person any money deposited in a seamen's savings bank or any interest thereon —

Forging document relating to deposit in seamen's savings bank

(1) Forges or fraudulently alters, assists in forging etc, or procures to be forged etc any document purporting to show or assist in showing any right to any such money etc (c),

(2) Makes use of any document which has been so forged etc (d);

(3) For the purpose of obtaining either for himself or for any other person any property (e) of any deceased seaman or apprentice to the sea service, forges etc or assists in forging etc, or procures to be forged etc any document purporting to show etc. any right to such property (f);

(4) Makes use of any document so forged etc (g).

The punishment for these offences on indictment is penal servitude for not more than five nor less than three years, or imprisonment, with or without hard labour, for not more than two years, or on summary conviction, imprisonment, with or without hard labour, for not more than six months (h)

**1474** Every person is by statute (i) guilty of a misdemeanour who

Forging, etc. certificate of discharge under Merchant Shipping Act, 1894

(1) Forges or fraudulently alters any certificate of discharge or report of character, or copy of a report of character given under the Merchant Shipping Act, 1894 (i),

(2) Assists in committing or procures to be committed the last-mentioned offence (h),

(3) Fraudulently uses any certificate of discharge etc which is forged etc or does not belong to him (l),

(4) Fraudulently alters, makes any false entry in or delivers a false copy of an agreement with the crew of a British ship under the Act (m),

(5) Forges etc or assists in forging etc any certificate of competency or an official copy of such certificate (n),

Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 These offences are not triable at quarter sessions

(a) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), ss 60, 66

(b) *Ibid*, ss 66 and 695 (4), Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 These offences are not triable at quarter sessions

(c) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 154.

(d) *Ibid*

(e) As to definition of property, see *ibid*, s. 676

(f) *Ibid*, s 180

(g) *Ibid*

(h) *Ibid*, ss 154 and 180, Penal Servitude Act, 1891 (54 & 55 Vict c 69)

s. 1 These offences are not triable at quarter sessions

(i) 57 & 58 Vict c 60, see s. 130 (b) See *R. v. Wilson* (1858), *Dears & B.* 558

(k) *Ibid*, s 130 (c).

(l) *Ibid*, s 130 (d)

(m) *Ibid*, s 121

(n) *Ibid*, s 104 (a).

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**Forgery.**

(6) Fraudulently uses a certificate etc which has been forged etc , cancelled, or suspended, or to which he is not entitled (*o*),

(7) Forges, assists in forging, procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration of survey or passenger steamer's certificate, or anything contained in or any signature to such declaration (*p*),

(8) In any proceedings under Part IX of the Merchant Shipping Act, 1894 (*q*), in relation to salvage by the King's ships, forges etc any document (*r*);

(9) In any such proceedings puts off or makes use of any forged etc document knowing that it is forged etc (*s*),

(10) Being an officer to whose custody an original document is intrusted, wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract (*s*),

(11) Forges or fraudulently alters or assists in forging etc any document in support of an application for wages under s 197 of the Merchant Shipping Act, 1894 (*t*),

(12) Presents or makes use of any document so forged etc ,

(13) Forges, assists in forging, or procures to be forged, the seal or any other distinguishing mark of the Board of Trade or any form issued by the Board of Trade under the Act (*a*),

(14) Fraudulently alters any such form (*a*)

For these offences the punishment on indictment is imprisonment, with or without hard labour, for not more than two years, except in the case of the offence No 10, in respect of which the maximum punishment is imprisonment for eighteen months (*b*)

Forging  
signature of  
sea fishery  
officer.

**1475** Everyone is by statute (*c*) guilty of a misdemeanour who —

(1) Forges the signature of a sea-fishery officer to a document drawn up in pursuance of the first schedule to the Sea Fisheries Act, 1883,

(2) Makes use of such signature knowing that it is forged etc

The punishment for this offence is imprisonment, with or without hard labour, for not more than two years on indictment, and for not more than three months on summary conviction (*d*).

(xi) *Transfers of Stock etc*

Forging  
transfer of  
stock etc.

**1476** Everyone is by statute (*e*) guilty of felony who with intent to defraud —

(1) Forges or alters or utters etc with knowledge that it is

(*o*) Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 104 (*o*).

(*p*) *Ibid*, s 282

(*q*) 57 & 58 Vict c 60

(*r*) *Ibid*, s 564, and see p 560, *ante*

(*s*) *Ibid*, s 695 (3)

(*t*) *Ibid*, s. 197 (8)

(*u*) *Ibid*, s 722

(*b*) *Ibid*, ss 130, 104, 282, 564, 680, 695 (3) These offences are not triable at quarter sessions. On summary conviction, the punishment for any such offence is imprisonment, with or without hard labour, for not more than six months or a fine not exceeding £100 (*ibid*)

(*c*) 46 & 47 Vict c 22, see *ibid*, s 47

(*d*) *Ibid*, s 17 (4) This offence is not triable at quarter sessions

(*e*) Forgery Act, 1861 (24 & 25 Vict. c 98), ss 2, 5, 7, Forgery Act, 1870 (33 & 34 Vict c 58), ss. 3—6

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Forgery.

forged etc any transfer of any share or interest in any stock, annuity, or other public fund transferable at the Bank of England or Ireland, or in the capital stock of any body corporate, company, or society established by charter or by, under, or in virtue of any Act of Parliament (*f*);

(2) Forges etc or alters etc with knowledge that it is forged etc any power of attorney or other authority to transfer any share etc of or in any such stock etc or to receive any dividend or money payable in respect of any such share or interest (*g*),

(3) Demands or endeavours to have any such share or interest transferred or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered power of attorney etc with knowledge that it is forged etc (*h*),

(4) Forges etc or utters etc with knowledge that it is forged etc any stock certificate or coupon or document purporting to be a certificate etc issued in pursuance of Part V of the National Debt Act, 1870 (*i*), or of any former Act or any India or colonial stock certificate etc, or any document purporting to be such certificate etc, or any bond, debenture or security commonly called an East India bond, or any bond etc issued or made under the authority of any Act passed or to be passed relating to the East Indies, or any indorsement on or assignment of such bond etc (*k*),

(5) Demands or endeavours to obtain or receive any share or interest of or in any stock as defined by the National Debt Act, 1870 (*i*), or of or in India or colonial stock, or to receive any dividend or money payable in respect thereof by virtue of any such forged etc certificate etc with knowledge that it is forged etc (*l*),

(6) Forges etc or utters etc with knowledge that it is forged etc any certificate or duplicate certificate required by Part VI of the National Debt Act, 1870 (*i*), or by any former like Act (*m*),

(7) Wilfully makes any false entry in or wilfully alters any word or figure in any of the books of accounts kept by the Bank of England or of Ireland in which the accounts of the owners of any stock, annuities or other public funds transferable at such bank are entered and kept (*n*),

(8) Wilfully falsifies any of the accounts of any such owner in any of such books (*o*),

(*f*) Forgery Act, 1861 (24 & 25 Vict c. 98), s. 2. "Capital stock of a body corporate" includes consolidated stock created under the Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102) (see *ibid.*, s. 19, see now Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40), debenture stock under the Local Loans Act, 1875 (38 & 39 Vict. c. 83) (see *ibid.*), and colonial stock issued under the Colonial Stock Acts, 1877-1900 (40 & 41 Vict. c. 59, 55 & 56 Vict. c. 35, 63 & 64 Vict. c. 62) (see Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 21).

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 2

(*h*) *Ibid.*

(*i*) 33 & 34 Vict. c. 71

(*k*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 3, Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 7, India Stock Certificate Act, 1863 (26 & 27 Vict. c. 73), s. 13; Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 21.

(*l*) *Ibid.*

(*m*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 6.

(*n*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 5

(*o*) *Ibid.*, s. 5

## SECT. 4

## Forgery

(9) Wilfully makes any transfer of any share etc. of or in any such stock etc. in the name of any person not being the true and lawful owner of such shares etc (*p*),

(10) Forges etc. or utters etc with knowledge that it is forged etc any share warrant or coupon, or document purporting to be a share warrant etc issued in pursuance of the Companies (Consolidation) Act, 1908 (*q*),

(11) By means of any such forged etc share warrant etc demands or endeavours to obtain or receive any share or interest in any company under the last-mentioned Act, or to receive any dividend or money payable in respect thereof by virtue of any such forged etc share warrant etc with knowledge that the same is forged etc (*r*)

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment, with or without hard labour, for not more than two years (*s*)

Engraving  
stock  
certificate etc

1477 Everyone is by statute guilty of felony (*t*) who without lawful authority or excuse (*u*) —

(1) Engraves or makes on any plate, wood, stone, or other material any stock certificate or coupon purporting to be a stock certificate or coupon issued in pursuance of Part V of the National Debt Act,

(*p*) Forgery Act, 1861 (24 & 25 Vict c 98), s 5

8 Edw 7, c 69, see s 38

*Ibid*, s 38

Forgery Act, 1861 (24 & 25 Vict c 98), ss 2, 5, 7; Forgery Act, 1870 (33 & 34 Vict c 58), ss 3, 6, India Stock Certificate Act, 1863 (26 & 27 Vict c 73), s 13, Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict c 102), s 19, Local Loans Act, 1875 (38 & 39 Vict c 83), Colonial Stock Act 1877 (40 & 41 Vict c 59), s 21, Companies (Consolidation) Act, 1908 (8 Edw 7, c 69), s 38, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 These offences are not triable at quarter sessions The forging or altering of a certificate required by the India Stock Transfer Act, 1862 (25 & 26 Vict c 7), or the uttering etc such certificate with knowledge that it is forged etc, or the forging of any name, handwriting, or signature, purporting to be the name etc of a witness attesting the execution of any power of attorney, or other authority to transfer any share or interest of or in any stock to which ss 2 and 3 of the Forgery Act, 1861 (24 & 25 Vict c 98), apply, or to utter etc such name etc with knowledge that it is forged, is a felony punishable with penal servitude for not more than seven or less than three years, or imprisonment, with or without hard labour, for not more than two years (India Stock Transfer Act, 1862 (25 & 26 Vict c 7), s 14, Forgery Act, 1861 (24 & 25 Vict c 98), s 4) To make a false entry in or to alter any of the books for transfer of consolidated stock created by the Metropolitan Board of Works or by the London County Council, or to falsify any of such books or to make any transfer of such stock in the name of any person who is not the true owner, is a felony punishable in the same way as the last-mentioned felonies, except that the maximum period of penal servitude is fourteen years (Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict c 102), s. 20, Local Government Act, 1888 (51 & 52 Vict c 41), s. 40, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1) The last-named offences are not triable at quarter sessions As to the forgery of debentures, see p. 733, *ante*, and the fraudulent personation of the owners of stock etc. see p. 706, *ante*

(*t*) Forgery Act, 1870 (33 & 34 Vict c 58), s. 5, Companies (Consolidation) Act, 1908 (8 Edw 7, c. 69), s. 38

(*u*) The onus of proof of such authority or excuse in each case lies on the party accused (Forgery Act 1870 (33 & 34 Vict c 58), s 5, Companies (Consolidation) Act, 1908 (8 Edw 7, c. 69), s 38)



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1870 (a), or to be such a stock certificate or coupon in blank, or to be a part of such a stock certificate or coupon, or share warrant or coupon as aforesaid (b);

(2) Uses any such plate etc. for the making or printing of any such stock certificate etc. (c),

(3) Knowingly has in his custody or possession any such plate etc. (d),

(4) Knowingly utters etc., or has in his custody or possession any paper on which any such blank stock certificate or coupon, or part of any such stock certificate or coupon as aforesaid, is made or printed (e),

(5) Engraves or makes on any plate etc. any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of the Companies (Consolidation) Act, 1908 (f), or to be a blank share warrant or coupon so issued or made, or to be part of such share warrant or coupon (g),

(6) Uses any such plates etc. for making or printing any such share warrant etc. (h),

(7) Knowingly has in his custody or possession any such plate etc.

The punishment for these offences is penal servitude for not more than fourteen years nor less than three years, or imprisonment, with or without hard labour, for not more than two years (i)

**1478** Every person is by statute guilty of felony who with intent to defraud —

*Fraudulently  
making out  
dividend  
warrants etc*

(1) Being a clerk, officer, or servant of, or other person employed or intrusted by, the Bank of England or of Ireland, knowingly makes out or delivers any dividend warrant, or warrant for payment of any annuity, interest, or money payable at the Bank of England or of Ireland for a greater or less amount than the person on whose behalf such warrant shall be made out is entitled to (k),

(2) Being a clerk etc. employed by the London County Council or the person or body corporate who keeps the books of transfer of consolidated stock created by the Metropolitan Board of Works or the London County Council, makes out or delivers any stock certificate, dividend warrant, or document for the payment of money with relation to such stock for a greater or less amount than the person on whose behalf such certificate is made out is entitled to (l).

(a) 33 & 34 Vict. c. 71

(b) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 5, Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38

(c) *Ibid.*

(d) *Ibid.*

(e) *Ibid.*

(f) 8 Edw. 7, c. 69

(g) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38 (2)

(h) *Ibid.*

(i) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 5, Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38 (2), Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 These offences are not triable at quarter sessions

(k) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 6

(l) Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 21, Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40

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The punishment for any such offence is penal servitude for seven years or for any period not less than three years, or imprisonment for any term not exceeding two years, with or without hard labour (*m*).

Inserting  
false entry  
of number  
of shares in  
banking  
company in  
any contract  
for sale of  
shares etc

**1479** Every person is by statute (*n*) guilty of a misdemeanour who in any contract, agreement, or token for the sale or transfer of any share or stock in any joint stock banking company in the United Kingdom, constituted under or regulated by the provisions of any Act of Parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, wilfully inserts any false entry of the number of such shares or any name other than that of the person in whose name such shares etc stand in the register or book of such company.

The punishment for this offence is imprisonment without hard labour, or fine, or both (*o*).

(xii) *Hall Marks on Plate.*

Forging dies  
for stamping  
gold or silver  
plate etc.

**1480** Every person is by statute (*p*) guilty of felony who —

(1) Forges or counterfeits or utters, knowing it to be forged etc, any die or other instrument or part of such die etc provided and used by the Goldsmiths' Company in London, or the Goldsmiths' Companies in York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne, or the companies of guardians of the standard of wrought-plate in Sheffield or Birmingham for the marking or stamping of gold or silver wares (*p*),

(2) Marks with such forged etc die etc any ware of gold or silver or of base metal (*p*),

(3) Utters any such ware of gold or silver or of base metal marked with such forged etc die etc with knowledge that it was so marked (*p*),

(4) Forges etc or by any means produces an imitation of or utters, knowing that it is forged etc, any mark or part of any mark of any such die etc upon any ware of gold or silver or base metal (*q*),

(5) Transposes or removes or utters, knowing it is transposed etc, any mark of any such die etc from any ware of gold or silver to any ware of base metal (*q*),

(6) Has in his possession without lawful excuse any such forged etc die etc or any ware of gold etc having the mark of any such forged etc die, or any such forged etc mark or imitation of a mark or having a mark which has been transposed etc (*q*),

(7) Cuts or severs from any ware of gold etc any mark or part of mark of any such die with intent that such mark etc

(*m*) Forgery Act 1861 (24 & 25 Vict. c 98), s 6, Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s 21, Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s 1. This offence is not triable at quarter sessions.

(*n*) Banking Companies' (Shares) Act, 1867 (30 & 31 Vict. c 29), s 1. The Act does not extend to the Bank of England or of Ireland.

(*o*) *Ibid*. This offence is not triable at quarter sessions.

(*p*) Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s 2.

(*q*) *Ibid*.

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may be placed upon or joined or affixed to any other ware of gold or silver or any ware of base metal (r),

(8) Places upon or joins or affixes to any ware of gold or silver or base metal any mark of any such die etc. cut or severed from any ware of gold or silver (r),

(9) With intent to defraud the King or any of the before-mentioned companies, uses any genuine die etc., or counsels, aids, or abets such offence (r)

The punishment for these offences is penal servitude for not more than fourteen years nor less than three years, or imprisonment, with or without hard labour, for not more than two years (s).

(XIII) *Trade Marks etc*

**1481** Every person is by statute (t) guilty of a misdemeanour who — Forging trade marks etc.

(1) Forges any trade mark (t),

(2) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive (t),

(3) Makes any die, block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark (t),

(4) Applies any false trade description to goods (a),

(5) Disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark (b),

(6) Causes any of the things above mentioned to be done (c),

(7) Sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture any goods or things to which any false trade mark or false trade description is applied or to which any trade marks or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, unless the defendant proves that having taken all reasonable precautions against

(1) Gold and Silver Wares Act, 1844 (7 & 8 Vict c 22), s 1  
 (2) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 6) s 1 Except as regards the last mentioned offence, an intent to defraud is not a necessary ingredient of the offence (*R v Spittle* (1902), 18 T L R 436, see *R v Ogden* (1834), 6 C & P 631) There are similar provisions in the Plate Assay (Sheffield and Birmingham) Act, 1772 (13 Geo 3, c 52), s 14 These offences are not triable at quarter sessions

(3) Merchandise Marks Act, 1887 (50 & 51 Vict c 28) s 2 As to meaning of trade mark, see title TRADE MARKS AND DESIGN

(a) Merchandise Marks Act, 1887 (50 & 51 Vict c 28), s 2 (d) "Trade description" means any description, statement, or other indication, direct or indirect, as to (a) the number, quantity, measure, gauge, or weight of any goods, (b) the place or county where any goods were made or produced, (c) mode of manufacturing or producing any goods, (d) the material of which the goods are composed, (e) any goods, being the subject of an existing patent, privilege, or copyright, and the use of any figure or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters "False trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, when that alteration makes the description false in a material respect, the fact that a trade description is a trade mark or a part of a trade mark does not prevent such trade mark being a false description (*ibid*, s 3)

(b) *Ibid*, s 2 (e)

(c) *Ibid*, s 2 (f) In all the above-mentioned cases the onus of disproving, intent to defraud is on the defendant (see *ibid*, s 2)

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committing an offence against the Merchandise Marks Act, 1887 (*d*), he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description, and gave all the information in his power with regard to the persons from whom he obtained such goods etc., or that otherwise he acted innocently (*e*)

The punishment for these offences on indictment is imprisonment, with or without hard labour, for not more than two years, or fine, or both (*f*)

(xiv) *Miscellaneous Instruments*

**Forging  
certificate of  
valuation  
under Slave  
Trade Act,  
1824 etc.**

**1482** Every person is by statute guilty of felony who —

(1) Wilfully and fraudulently forges or counterfeits any certificate, certificate of valuation, sentence, or decree of condemnation or restitution, copy of such sentence etc., or any receipt required by the Slave Trade Act, 1824 (*g*), or any part of such certificate etc. (*h*),

(2) Knowingly etc utters or publishes such certificate etc with knowledge that it is forged etc with intent to defraud the King or any other person (*i*)

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment, with or without hard labour, for not more than two years (*j*)

**Forging  
warranty  
for the  
purposes of  
the Sale of  
Food and  
Drugs Act,  
1875**

**1483** Every person is guilty of a misdemeanour who forges, or for the purposes of the Sale of Food and Drugs Act, 1875 (*k*), utters, knowing it to be forged, any certificate or any writing purporting to contain a warranty (*l*)

The punishment for this offence is imprisonment with or without hard labour for not more than two years (*m*)

**Forging  
licence under  
London  
Hackney  
Carriage Act,  
1843, etc**

**1484** Every person is by statute (*n*) guilty of a misdemeanour who —

(1) Forges or counterfeits, or causes or procures to be forged etc any licence or ticket directed by the London Hackney Carriages Act, 1843 (*n*), to be provided for the driver of a hackney carriage or for the driver or conductor of a metropolitan stage carriage (*o*),

(*d*) 50 & 51 Vict c 28

(*e*) *Ibid*, s. 2 (2)

(*f*) *Ibid*, s. 2 (3) These offences are triable at quarter sessions. On summary conviction the punishment is imprisonment, with or without hard labour, for not more than four months for a first offence and six months for a second offence, or a fine not exceeding £20 for a first offence or £50 for a second offence. In any case the defendant forfeits to the King every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed. See also p 586, *ante*, and title TRADE MARKS AND DESIGNS.

(*g*) 5 Geo 4, c 113

(*h*) *Ibid*, s. 10

(*i*) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1 These offences are not triable at quarter sessions —

(*k*) 38 & 39 Vict c. 63

(*l*) *Ibid*, s. 27

(*m*) *Ibid* This offence is not triable at quarter sessions. See also title FOOD AND DRUGS

(*n*) 6 & 7 Vict c 86

(*o*) *Ibid*, s. 33.

(2) Sells or exchanges or exposes to sale or utters any such forged etc licence etc (*p*),

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(8) Knowingly and without lawful excuse has or is possessed of such forged etc licence or ticket knowing it is forged etc. (*q*),

(4) Knowingly and wilfully aids and abets any person in committing any of these offences (*r*)

The punishment for this offence is imprisonment with or without hard labour, or fine, or both (*s*).

**1485** Every person is by statute (*t*) guilty of a misdemeanour who —

Forging  
licence under  
Explosives  
Act, 1875, etc.

(1) Forges or counterfeits any licence, certificate, document, or plan granted or required in pursuance or for the purposes of the Explosives Act, 1875 (*t*),

(2) Gives or signs any such document or plan which is to his knowledge false in any material particular (*u*),

(3) Wilfully makes use of any such forged counterfeit or false licence etc. (*a*)

The punishment for these offences is imprisonment, with or without hard labour, for not more than two years on indictment, and on summary conviction for not more than one month (*b*)

**1486** Every person is by statute (*c*) guilty of a misdemeanour who —

Forging  
statement  
under Coal  
Mines  
Regulation  
Act, 1897, etc.

(1) Forges or counterfeits or knowingly makes any false statement in any certificate of competency under the Coal Mines Regulation Act, 1887 (*c*), or any certificate of service granted under that Act or any Act repealed by that Act (*d*), or any official copy of any such certificate (*e*),

(2) Knowingly utters or uses any such certificate or copy which has been forged or counterfeited or contains any false statement (*f*),

(3) For the purpose of obtaining for himself or any other person employment as a certificated manager or under-manager, or the grant, renewal, or restoration of any certificate under the Act, or a copy thereof, makes or gives any declaration, representation, statement, or evidence which is false in any particular, or knowingly utters, produces, or makes use of any such declaration etc or any document containing the same (*g*)

(*p*) London Hackney Carriages Act, 1843 (6 & 7 Vict c 86), s 20

(*q*) *Ibid* The onus of proving the lawful excuse is on the defendant (*ibid*)

(*r*) *Ibid*

(*s*) *Ibid* There is no limit as to the term of imprisonment (*ibid*, see p 410, ante). These offences are not triable at quarter sessions. Forging a mark identifying a motor car or a licence under the Motor Car Act, 1903 (3 Edw 7, c 36), is an offence punishable on summary conviction (see *ibid*, ss 5, 11). See also title STREET TRAFFIC

(*t*) 38 Vict. c. 17, *ibid*, s. 81

(*u*) *Ibid*.

(*b*) *Ibid*, ss 81, 91 This offence is not triable at quarter sessions.

(*c*) 50 & 51 Vict c. 58

(*d*) See *ibid*, schedule, 4.

(*e*) *Ibid*, s 32 (1)

(*f*) *Ibid*, s 32 (2)

(*g*) *Ibid*, s 32 (3)

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**Forgery**

Forging  
nomination  
paper under  
Ballot Act,  
1872.

The punishment for these offences is imprisonment for not more than two years, with or without hard labour (*h*).

**1487** Everyone is by statute (*i*) guilty of a misdemeanour who forges or fraudulently defaces or destroys any nomination paper used for the purpose of the Ballot Act, 1872 (*i*), or knowingly delivers such forged paper to the returning officer, or forges or fraudulently defaces or destroys any ballot paper or the official mark on any ballot paper used for the purpose of the same Act (*k*)

The punishment for such offence, if the offender is a returning officer or officer or clerk in attendance at a polling station, is imprisonment for not more than two years, with or without hard labour, or if the offender is any other person, imprisonment for not more than six months, with or without hard labour (*l*)

Forging  
nomination  
papers under  
Municipal  
Corporations  
Act, 1882

**1488** Everyone is by statute (*m*) guilty of a misdemeanour who forges or fraudulently defaces or destroys any nomination paper used for the purpose of the Municipal Corporations Act, 1882 (*m*), or knowingly delivers such forged paper to the town clerk, or attempts to commit any such offence (*n*)

The punishment for any such offence is imprisonment for any term not exceeding six months, with or without hard labour (*o*)

Forging  
telegrams

**1489** Everyone is by statute (*p*) guilty of a misdemeanour who forges, or wilfully and without due authority alters a telegram, or utters a telegram so forged or altered, or transmits by telegraph as a telegram, or utters as a telegram a message or communication which he knows to be not a telegram

The punishment for such offence on conviction on indictment is imprisonment for not more than twelve months, with or without hard labour (*q*)

Demanding  
money etc  
under forged  
instrument

**1490** Every person is by statute guilty of a felony who with intent to defraud demands, receives, or obtains, or causes or procures to be

(*h*) Coal Mines Regulation Act, 1887 (50 & 51 Vict c 58), s 32 These offences are not triable at quarter sessions See also title MINES, MINERALS, AND QUARRIES

(*i*) 35 & 36 Vict c 33

(*k*) *Ibid*, s 3

(*l*) *Ibid* This offence is not triable at quarter sessions

(*m*) 45 & 46 Vict c 50

(*n*) *Ibid*, s 74

(*o*) *Ibid* This offence is not triable at quarter sessions See also title ELECTIONS

(*p*) Post Office (Protection) Act, 1884 (47 & 48 Vict c 76), s 11 This offence may be committed without intent to defraud (*ibid*), "telegram" means a "written or printed message or communication, sent to or delivered at a post office, or the office of a telegraph company, for transmission by telegraph, or delivered by the Post Office or a telegraph company as a message or communication transmitted by telegraph" (s 11) A telegram has also been held to be an "instrument" within the meaning of the Forgery Act, 1861 (24 & 25 Vict c 98), s 38, which makes it an offence to obtain money by means of a forged instrument (*R v Riley*, [1896] 1 Q. B 309, O C R)

(*q*) *Ibid*, s 11 This offence is not triable at quarter sessions On summary conviction the punishment is a fine of not more than £10 (*ibid*) See also titles TELEGRAMS AND TELEPHONES

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delivered or paid to any person, or endeavours to receive or obtain or to cause or procure to be delivered or paid to any person any chattel, money, security for money, or other property whatsoever under, upon, or by virtue of any forged or altered instrument with knowledge that it is forged etc., or under etc any probate or letters of administration with knowledge that the will etc on which probate or letters of administration have been obtained is forged etc., or that such probate etc has been obtained by any false oath, affirmation, or felony (i)

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment, with or without hard labour, for not more than two years (s)

SUB-SECT. 3 — *Indictment, Evidence and Punishment*

**1491** In an indictment for forging, altering, offering, uttering, disposing, or putting off any instrument, the instrument may be described by any name or designation by which it is usually known or by the purport thereof without setting out any copy or facsimile or otherwise describing it or its value Indictment

A similar description is sufficient in an indictment for engraving or making the whole or any part of any instrument matter or thing, or for using or having unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument etc has been made etc (i)

It is usual in an indictment for forgery to allege the offence in one count as a forgery and in a second count as an uttering (a)

**1492** In an indictment for forging, uttering etc, any instrument, when it is necessary to allege an intent to defraud, it is sufficient to allege that the person accused did the act charged with intent to Intent to defraud

(r) Forgery Act, 1861 (24 & 25 Vict c 98), s 38, see *R v Riley*, [1896] 1 Q B 309, C C R, in which a "telegram" was held to be an instrument within the meaning of the section

(s) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions

(t) Forgery Act, 1861 (24 & 25 Vict c 98), ss 42, 43

The necessity for setting out a copy of a forged instrument was first abolished by stat (1832) 2 & 3 Will 4, c 123, s 3, which was superseded by the Criminal Procedure Act, 1851 (14 & 15 Vict c 100), ss 5, 6 of which are reproduced in the Forgery Act, 1861 (24 & 25 Vict c 98), ss 42, 43 It seems that the indictment even now must state what the instrument is (see *R v Wilcox* (1891), Russ & Ry 50, and see *R v Hunter* (1794), 2 Leach, 624, *R v Berkett* (1813), Russ & Ry 251, *R v Hunter* (1823), Russ & Ry 511)

(a) Most of the statutes which make uttering a separate offence describe the offence by the use of the words "offer, utter, dispose of and put off" An indictment for forgery may be in the following form — "The jurors for our lord the King upon their oaths present that John Jones on the — day of March in the year of Our Lord —, feloniously did forge a certain bill of exchange with intent thereby then to defraud against the form of statute in that case made and provided Second count And the jurors aforesaid upon their oath aforesaid, do further present that the said John Jones afterwards to wit on the day and year aforesaid feloniously did offer, utter, dispose of and put off a certain forged bill of exchange with intent thereby to defraud, he the said John Jones at the time he so offered, uttered, disposed of and put off the said last-mentioned bill of exchange as aforesaid well knowing the same to be forged against the form etc "

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defraud without alleging an intent to defraud any particular person (b).

1493 On the trial of such an indictment it is therefore only necessary to prove a general intent to defraud, it is not necessary to prove an intent to defraud any particular person or that any particular person was defrauded. It is essential to prove that the defendant forged or altered the whole or part of the instrument in question or made some material addition to such instrument (c). Such proof is given by calling witnesses to show that the part which is forged is in the handwriting of the defendant, this may be shown by the admission of the defendant himself (d), or by the evidence of persons acquainted with his handwriting, either from having seen him write or from corresponding with him (e), or by the evidence of experts who are not acquainted with his handwriting but who by comparing the alleged forgery with other writings proved at the trial to be that of the defendant's can say that the alleged forgery is his work. Evidence must be given to show who was the person whose signature or writing is forged, and to show either that there is no such person (f) or, if there is such a person, that he did not write the alleged signature or writing (g).

It is not necessary to call the person whose signature or writing is forged, or to show that there was no authority to use his name, it is sufficient to prove that the alleged forgery was not in the handwriting of such person (h).

Production  
of forged  
document.

The forged document must, if it is possible, be produced at the trial. If the document is in the prisoner's possession, it may be obtained by means of a search warrant in cases in which a search warrant can be issued (i). If possession of a forged document has been traced to the defendant and the prosecution are unable to obtain possession of it, a notice to produce the document should be

(b) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 44. As to the law before the statute see *R v Pownor* (1872), 12 Cox, C. C. 235. In an indictment under the Forgery Act, 1861 (24 & 25 Vict. c. 98) s. 28, where the intent to defraud does not appear in the definition of the offence, it seems that the common law definition of forgery must be imported into the section and that an intent to defraud must be alleged.

(c) *Waldridge v Kennison* (1794), 1 Esp. 143. See p. 249, note (p), ante.

(d) *Burr v Harper* (1816), Holt (N. P.), 420, *Willman v Worrall* (1838), 8 O & P 380, *Warner v Anderson* (1839), 8 Scott, 384, *Lewis v Sapio* (1827), Mood & M. 89, *Gould v Jones* (1762), 1 Wm. Bl. 384, *R v Slaney* (1832), 5 O & P 213.

(e) See Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 8, *R v Silverlock*, [1891] 2 Q. B. 766, O. C. R., see *R v Williams* (1838), 8 O & P 434. It is for the judge to decide whether a person tendered as a witness is qualified as an expert (*R v Silverlock*, *supra*, *R v Wilbain* (1863), 9 Cox, C. C. 448, *R v Hurvey* (1869), 11 Cox, C. C. 546).

(f) See *R v Backler* (1831), 5 O. & P. 118, *R v King* (1832), 5 O & P 123, *R v Brannan* (1834), 6 O & P 326.

(g) *R v Sponsbury* (1784), 1 Leach, 332, *R v Downes* (1789), 1 Leach, 314, n.

(h) *R v Hurley* (1843), 2 Mood & R. 473.

(i) See Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 46. As to when search warrants may be issued, see p. 309, ante.



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served on the defendant a reasonable time before the commencement of the sittings of the court at which he is tried, and, if such notice is duly served, and proof given of such service, the contents of the document can be proved by secondary evidence (*h*). If the document is proved to be lost (*l*), or if it is in the hands of a third person who, being served with a *subpœna duces tecum* refuses on the ground of privilege to produce it, secondary evidence of its contents may be given (*m*).

On an indictment for forging an instrument it is not necessary to prove any uttering (*n*).

**1494** The offence of uttering a forged instrument is distinct from but connected with the act of forgery (*o*). Most of the statutes relating to forgery contain the words "offer, utter, dispose of, and put off," and these words cover the cases where a forged instrument is shown or produced, although not "uttered" in the strict sense of the word (*a*).

Proof of  
uttering

(*h*) *R v Hunter* (1829), 4 C & P 128, *R v Haworth* (1830), 4 C & P 254, *R v Fitzsimons* (1870), 18 W R 763, C C R (Ir), see p 391, ante.

(*l*) *R v Hall* (1872), 12 Cox, C C 159.

(*m*) See p 391, ante.

(*n*) See *R v Crooke* (1731), 2 Sta 901, *R v Goate* (1700), 1 Ld Raym 737, *R v Holden* (1809), Russ & Ry 154, *R v Mazagna* (1815), Russ & Ry 291, *R v Montson* (1817), 2 Car & Kir 777, *R v Nash* (1852), 2 Den 493, *R v Crouther* (1832), 5 C & P 316. *Quære* whether it is not necessary that there must be a possibility of some person being defrauded by the forgery (*R v Marcus* (1816), 2 Car & Kir 356). If a person is actually defrauded as the necessary consequence of the defendant's act, that is sufficient evidence of the intent (*R v Trenfield* (1858), 1 F & F 1), even although the person defrauded avows that he believed that the defendant had no intent to defraud (*R v Sheppard* (1810), Russ & Ry 169). If A B, knowing that a bill is forged, utters it to C D and means that C D should believe it to be genuine, the jury are bound to infer that A B did it with intent to defraud (*R v Hall* (1838), 2 Mood C C 30), even though A B's intention was to take up the bill and pay it on maturity (*R v Coole* (1838), 8 C & P 562, *R v Geach* (1840), 9 C & P 49), or even if A B had a legal claim against the person defrauded to an amount equal to that obtained by the forgery (*R v Wilson* (1817), 1 Den 281). If a forged instrument is given by a defendant to his bankers, the fact that he has given guarantees to them to a larger amount than that of the instrument does not completely negative an intent to defraud, but the intent must be, notwithstanding such fact, left to the jury (*R v James* (1836), 7 C & P 553, and see *R v Cooke*, *supra*).

(*o*) 2 East, P C 973.

(*a*) To constitute an uttering the instrument must be parted with or tendered, or offered or used in some way to get money or credit upon it, i.e., by means of it (*R v Ivin* (1852), 2 Den 475, at p 492). The mere showing of a forged bank note by a person with the intent of raising a false idea of the person's wealth, or the leaving it with another person to take care of, has been held not to constitute an uttering (*R v Shukard* (1811), Russ & Ry 200). To hand over a forged instrument as a pledge is an uttering (*R v Birckett* (1805), Russ & Ry 86). A conditional uttering is just as much a crime as any other uttering (*R v Cooke* (1838), 8 C & P 562). If A B, who owes money to C D, on being pressed by C D for payment produces to C D a forged receipt for the sum but refuses to part with the receipt, such a use of the receipt is either an offering or an uttering within the Forgery Act, 1830 (11 Geo 4 & 1 Will 4, c 60), s 10 (which is reproduced in ss 20 and 23 of the Forgery Act, 1861 (21 & 23 Vict c 98)) (*R v Radford* (1844), 1 Den 59). When proceedings were taken before justices against a pawnbroker to compel him to deliver goods which had been

## SECT 4

**Forgery.**

In the case of uttering, evidence must be given to show that the instrument was forged, but, as in the case of forgery, it is not necessary to show by whom it was forged

The intent to defraud in the case of uttering is proved by evidence that the defendant uttered the forged document for the purpose of obtaining money or credit by means of it, and that at the time he so uttered it he knew that it was forged (*b*)

Knowledge  
that instru-  
ment was  
forged

Proof must be given that at the time when the defendant uttered the forged instrument he knew that it was forged. This proof can be given by evidence that the defendant on other occasions uttered or had possession of other forged instruments (*c*)

Punishment  
for statutory  
forgery not  
included in  
the Forgery  
Act, 1861

**1495** Every person guilty of any forgery or offence connected therewith not included under the Forgery Act, 1861 (*d*), if made a felony by any Act in force at the date of the passing of that Act, and punishable before the Forgery Act, 1861 (*e*), with death, or any person aiding or abetting such offence, is punishable with penal servitude for life, or for any period not less than three years, or

pledged with him, and the pawnbroker was defended by a solicitor, who, in his presence, produced and handed up to the justices a ticket and said that it was the ticket which had been returned on the delivery of the goods, it was held that this amounted to an uttering by the pawnbroker (*R v Fitchie* (1857), Deans & B 17a). If an instrument is produced for some collateral purpose, and there is an intent to defraud, this amounts to an uttering, e.g., where E F, with the object of inducing G H to lend money to J K on the guarantee of E F, produced to G H for inspection by him forged receipts for the rates in respect of his house, it was held that this was an uttering within the Forgery Act 1861 (11 Geo 4 & 1 Will 4, c 66), s 10. If a forged instrument is posted in England in a letter addressed to a person abroad, the posting of the letter is an uttering of the instrument in England (*R v Lindester* (1886), 16 Cox, C C 107). If a person who produces a bill for the purpose of raising money upon it makes false representations as to the circumstances, occupation etc. of the acceptor, this is evidence to justify a finding that the defendant uttered the name of the acceptor as the name of a fictitious person, although there was a person actually in existence and bearing the name of the acceptor (*R v Nisbett* (1854), 6 Cox, C C 120). If A with fraudulent intent hands a forged instrument to B in order that B may raise money by means of it, if B is an accomplice, A's act amounts to a disposing or putting away of the note, if B is an innocent agent, A is guilty of uttering (*R v Palmer* (1804), 1 Bos & P (N R) 96. *R v Giles* (1827), 1 Mood C C 166), as to principals and accessories see p 247, ante.

(*b*) See *R v Hill* (1838), 2 Mood C C 30.

(*c*) *R v Hulse* (1804), 1 Bos & P (N R) 92, *R v Hough* (1806), Russ & Ry 120, *R v Willard* (1813), Russ & Ry 245, *R v Ball* (1808), 1 Camp 324, *R v Balls* (1836), 1 Mood C C 470, *R v Green* (1852), 3 Car & Kn 209, *R v Forster* (1850), Deans C C 456. *R v Salt* (1862), 3 F & F 834, *R v Coldough* (1882), 15 Cox, 92, C C R (Tr), this is the case even though such acts are the subject-matter of another indictment (*R v Kirkwood* (1830), 1 Low C C 103, *R v Martin* (1830), 1 Low C C 104, *R v Aston* (1838), 2 Russell on Crimes, 6th ed., 678, *R v Lewis* (1810), Archbold, Criminal Pleading, 8th ed., 365, but see *R v Hodgson* (1827), 1 Low C C 103, *R v Thomas Smith* (1827), 2 C & P 633. *R v Frederick Smith* (1831), 4 C & P 411, *Griffiths v Payne* (1839), 11 Ad & El 131). As to evidence of what was said by the defendant respecting such other forged instruments, see *R v Cooke* (1838), 8 C & P 586, *R v Brown* (1861), 2 F & F 559.

(*d*) 24 & 25 Vict c 98.

(*e*) 11 Geo. 4 & 1 Will 4, c 66.

with imprisonment for any term not exceeding two years with or without hard labour (*f*)

SECT 4  
Forgery.

**1496** There are a number of offences consisting of or arising out of forgery of particular instruments which are punishable on summary conviction only or for which penalties recoverable by action are imposed (*g*)

Summary  
conviction

**1497** The forging, altering, or uttering of any instrument (*h*) in England or Ireland which has been made an offence by the Forgery Act, 1861 (*i*), is none the less an offence by reason that such instrument may have been made or purport to have been made in any foreign country, or expressed in any foreign language, and the person committing such offence and any person aiding, abetting, or counselling him are punishable as if the instrument had been made in England or Ireland (*k*)

Foreign  
document

**1498** Where a felony has been committed under the Forgery Act, 1861 (*l*), the court may, in addition to the punishments authorised under that Act, require the offender to enter into his own recognisances and to find sureties, both or either, for keeping the peace (*m*)

Alternative  
punishments  
under  
Forgery Act,  
1861

Where a misdemeanour has been committed under the same Act, the court may, in addition to, or in lieu of, the punishments authorised thereunder impose a fine, and require the prisoner to enter into his own recognisances and find sureties, both or either, for keeping the peace (*n*)

(*f*) Forgery Act, 1861 (24 & 25 Vict c 98), s 48, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. These offences are not triable at quarter sessions.

(*g*) See Weights and Measures Act, 1878 (41 & 42 Vict c 49), s 32, Weights and Measures Act, 1904 (4 Edw 7 c 28) s 10, Customs Consolidation Act, 1876 (39 & 40 Vict c 36), s 168, Merchant Shipping Act, 1871 (57 & 58 Vict c 60), s 354, Borough Funds Act, 1903 (3 Edw 7, c 14), s 5, Sale of Gas Act, 1869 (22 & 23 Vict c 66), s 14, Fine Arts Copyright Act, 1862 (25 & 26 Vict c 66), ss 7, 8, Manufactured Tobacco Act, 1863 (26 & 27 Vict c 7), s 7, Army Act, 1881 (44 & 45 Vict c 58) s 121, Wine and Beerhouse Act, 1869 (32 & 33 Vict c 27), s 11, Pedlars Act, 1871 (34 & 35 Vict c 96), s 12, Pedlars Act, 1881 (44 & 45 Vict c 45), s 2, Pawnbrokers Act, 1872 (35 & 36 Vict c 93), ss 44, 49, Chimney Sweepers Act, 1875 (38 & 39 Vict c 70), s 19, Factory and Workshop Act 1901 (1 Edw 7, c 22), s 139, Seamen's and Soldiers' False Characters Act, 1906 (6 Edw 7, c 6), s 1, Seamen's Characters Act, 1792 (32 Geo 3, c 56), s 4.

(*h*) Writing or matter whatsoever (Forgery Act, 1861 (24 & 25 Vict c 98), s 40, (i) 24 & 25 Vict c 98.

(*k*) *Ibid*, s 40, as to accessories and venue, see p 247, *ante*. A principal in the second degree or an accessory before the fact to a felony punishable under the Forgery Act, 1861 (24 & 25 Vict c 98), is punishable in the same manner as the principal in the first degree. An accessory after the fact is punishable with imprisonment not exceeding two years with or without hard labour. A person aiding or abetting a misdemeanour under the same Act is punishable as a principal offender (*ibid*, s 49). As to principals and accessories in forgery, see *R v Soares* (1802) Russ & Ry 25, *R v Davis* (1806), Russ & Ry 113, *R v Badcock* (1813) Russ & Ry 249, *R v Morris* (1814) Russ & Ry 270, *R v Stewart* (1818), Russ & Ry 363, *R v Harris* (1836), 7 C & P 416.

(*l*) 24 & 25 Vict c 98.

(*m*) Forgery Act, 1861 (24 & 25 Vict c 98), s 51.

(*n*) *Ibid*. A justice of the peace has power to order search to be made for paper

## SECT 5

**Malicious  
Damage to  
Property.**Malicious  
damage.

Malice.

SECT 5—*Malicious Damage to Property.*SUB-SECT 1—*Malice*

**1499** Under the provisions of various statutes (o) the unlawful and malicious destruction or injury to property has been made criminal

A man is said to do an act "maliciously," when he intended to do the very unlawful act with which he is charged, or if such act is the necessary consequence of some other criminal act in which he was engaged, or where the act charged was the probable result of the act contemplated by the defendant, who either foresaw or ought to have foreseen the consequence and yet persisted in the unlawful act in which he was engaged (p)

An act done out of mischief, without any formal design of injuring anyone, but wantonly or recklessly, may be malicious (q) Malice may be inferred from the commission of a reckless or cruel act, though the doer of the act may not have had the intention of causing injury (a)

or implements employed for the purpose of forgery, upon reasonable cause being shown for the belief that any poison has unlawful possession thereof, and if such paper or implements are found, they may be destroyed or disposed of according to law (*ibid*, s 46)

(o) The most important and comprehensive of these statutes is the Malicious Damage Act 1861 (21 & 23 Vict c 97) The other statutes dealing with this subject are Dockyards etc Protection Act, 1772 (12 Geo 3, c 24) s 1, Railway Regulation Act, 1840 (3 & 4 Vict c 97), s 13, Tramways Act, 1870 (33 & 34 Vict c 78), s 50, Drugging of Animals Act, 1876 (39 & 40 Vict c 13), s 1, Fisheries (Dynamite) Act, 1877 (40 & 41 Vict c 60), s 2, Monuments (Metropolis) Act, 1878 (41 & 42 Vict c 29), s 4, Explosive Substances Act, 1883 (46 Vict c 3), ss 2, 3, Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 660

(p) Where a sailor entered a ship's spirit store for the purpose of stealing rum, and while tapping rum set fire to the spirit by a match which he held for the purpose of getting light, and the ship was destroyed by the fire, it was held that the sailor could not be convicted of unlawfully and maliciously setting fire to the ship (*R v Taulkner* (1877), 13 Cox, C C 550, C C R (1r), *R v Pemberton* (1874), L R 2 C C R 119), and where a prisoner threw a stone, intending to strike a person, and thereby broke a window, it was held that he could not be convicted of unlawfully and maliciously breaking the window (see *R v Latimer* (1886) 17 Q B D 359, C C R)

(q) *Re Burrows* [1900] 2 I R 293 (where some boys broke into a room out of curiosity and did further damage in getting out, and it was held that they had acted wilfully and maliciously) *R v Upton* (1861), 5 Cox, C C 298 (where the defendants mischievously placed a stone between the points on a railway line to cause obstruction, and it was held that they were guilty of acting maliciously with intent to damage etc.) The placing on a railway line of an obstruction is "wilful" if it is done intentionally and with knowledge that the substance placed is likely to produce an obstruction, though not necessarily with a view to upsetting a train (*R v Holroyd* (1841), 2 Mood & R 339) In *R v Prestney* (1849), 3 Cox, C C 505, damage done to a field by a poacher's dog was held not to be malicious injury

(a) *R v Welch* (1875), 13 Cox, C C 121, C C R On a charge of poisoning horses evidence of previous administration of poison to the same horses is receivable to show intent (*R v Megy* (1830), 4 C & P 364) If a poisonous substance is mixed with the horses' food and given to them with the intent to improve the appearance of the horses, this is not an administering with intent to kill or injure (*ibid*) As to evidence of malice or intent, see *R v Newbould*

SECT. 2.  
Malicious  
Damage to  
Property.

It is not a necessary ingredient of any of the offences under the Malicious Damage Act, 1861 (b), that the act charged, should have been committed from malice conceived against the owner of the property in respect of which the offence is committed (c) Malice in its legal import does not mean spite or ill-will, but the wilful doing of an illegal act (d).

**1500** In a prosecution under the Act for an offence of which an intent to injure or defraud is a necessary ingredient, it is not necessary to allege or to prove an intent to injure or defraud any particular person, it is sufficient to allege and to prove an intent to injure or defraud (e)

Intent to  
injure.

**1501** A person cannot be convicted of the offence of doing malicious injury to property if he is acting in the exercise of a legal right or if he is *bonâ fide* acting under a supposed right (f) If a servant *bonâ fide* acts in obedience to a master who claims a right, the servant cannot be said to act maliciously, even if the master claims a right which he knows does not exist The servant in a case of this kind can only be criminally liable if the master was acting maliciously and if the servant knew that the master was so acting (g) If the accused has done more damage than he can

Claim of  
right.

(1872), L R 1 C C R 314, *R v Farrington* (1811), Russ & Ry 207, *R v Regan* (1850), 4 Cox, C C 335, *R v Dossat* (1816), 2 Cox, C C 243, *R v Harris* (1864), 4 F & F 342, *R v Taylor* (1851), 5 Cox, C C 138, *R v Bailey* (1847), 2 Cox, C C 311, *R v Gray* (1866), 4 F & F 1102, *R v Grant* (1865), 4 F & F 322, *R v Heseltine* (1873), 12 Cox, C C 404

(b) 24 & 25 Vict c 97

(c) *Ibid*, s 58 And see *R v Philp* (1830), 1 Mood C C 203, *R v Newell* (1836), 1 Mood C C 458, *R v Davies* (1858), 1 F & F 69

(d) See *M'Pherson v Daniels* (1829), 10 B & C 263, 272, *per* LITTLERDALE, J; *R v Harvey* (1823), 2 B & C 257, 268, *per* BENTIN, J

(e) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 60 Compare the corresponding provisions, as regards false pretences, of the Larceny Act, 1861 (24 & 25 Vict c 96), s 88, see p 688, *ante*, and of the Forgery Act, 1861 (24 & 25 Vict c 98), s 44, see p 704, *ante* The wording of s 60 makes the case of *R v Connor* (1846), 2 Cox, C C 65, no longer applicable as an authority on this point It is only necessary to allege or prove an intent to injure or defraud in the case of offences of which such an intent is a necessary ingredient, e.g., offences under the Malicious Damage Act, 1861 (24 & 25 Vict c 97), ss 3, 14, 15, 24, 28, 29, 31, 32, 33, 35, 43, 45, 46, 47, 54 (see *R v Heseltine* (1873), 12 Cox, C C 404, *R v Newell* (1836), 1 Mood C C 458, but see *R v Smith* (1831), 4 C & P 569) In an indictment under s 3 for setting fire to the defendant's own house with intent to defraud an insurance company, it is not necessary to allege who is the owner of the property injured (*R v Neuboult* (1872), L R 1 C C R 314) *Quære* whether it is necessary to insert this allegation in any indictment under the Act, but where the essence of an offence is the unlawful and malicious injury of someone else's property, and when no offence could be committed, if the property injured belonged to the accused, it would seem advisable to aver to whom the property belongs

(f) *R v Rutter* (1908), 1 Cr App Rep 174, *R v Twiss* (1879), 14 Cox, C C 327, *Heard v Coles* (1891), 56 J P 119, *R v James* (1837), 8 C & P 131, *Hamilton v Bone* (1888), 16 Cox, C C 437, *R v Dodson* (1839), 9 Ad & EL 704, *Leyson v Williams* (1890), 54 J P 631, *Denny v Thunster*, 35 L T 628, and see *Croydon Rural District Council v Cowley* (1909), 100 L T 441

(g) *R v James*, *supra*. An indictment under the Malicious Damage Act,

**SECT 5**  
**Malicious**  
**Damage to**  
**Property.**

Property in  
 offender's  
 possession

reasonably have supposed to be necessary for the assertion of his right, he loses his claim to protection (*h*)

**1502** If a person does any act made punishable by the Malicious Damage Act, 1861 (*i*), with an intent to injure or defraud any other person, he is none the less guilty although he may be in possession of the property against or in respect of which the act was done (*k*)

**SUB-SECT 2 — Arson**

Arson at  
 common law

**1503** It is a felony at common law wilfully and maliciously to burn the dwelling-house of another (*l*)

To constitute the offence of arson it is necessary that something should be actually consumed by fire (*m*), though no flame need be visible (*n*), charring is sufficient (*o*), but not mere scorching (*p*)

The punishment for arson at common law is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than three years (*q*)

Arson by  
 statute

**1504** By statute (*r*) everyone is guilty of felony who unlawfully and maliciously sets fire (1) to any church, chapel, meeting-house, or other place of divine worship (*s*), (2) to any dwelling-house,

1861 (21 & 25 Vict c 97), must allege that the act was done feloniously, unlawfully, and maliciously (see *R v Reader* (1830), 4 C & P 245)

(*h*) *R v Clemens*, [1895] 1 Q B 558, O C R, *Heaven v Crutchley* (1903), 68 J P 53

(*i*) 21 & 25 Vict c 97, s 59

(*k*) *Ibid* This meets the case of injuries by tenants (see *ibid*, s 13, and *Mills v Collett* (1829), 6 Bing 80, but see *R v Rutter* (1908), 1 Cr App Rep 171)

(*l*) 3 Co Inst 66, 67, 1 Hale, P C 566, cited in *R v Faulkner* (1877), 13 Cox, C C 500, at p 552, O C R (Ir) It must appear on the face of the indictment that the house was that of another, the indictment must also state whose the house is, and the evidence must establish that the house is a dwelling-house, and is the house of the person named in the indictment (*R v Rickman* (1789), 2 East, P O 1034, and see *R v Glandfield* (1791), 2 East, P O 1034, *R v Connor* (1846), 2 Cox, C C 60), but the house of another does not include a landlord's house of which the prisoner is in possession under a lease for years or from year to year (*R v Breeme* (1780), 1 Leach 220, *R v Peilley* (1782), 1 Leach, 212), and see *R v Connor* (1846), 2 Cox, C C 65, *R v Kimbrey* (1854), 6 Cox C C 461) If a defendant by a wilful and malicious act sets fire to his own house with intent to defraud, and other houses contiguous thereto are consequently set on fire, the defendant is guilty of felony (*R v Isaac* (1799), 2 East, P O 1031, and see *R v Faulkner*, *supra*, per BARRY, J, at p 555) It is a misdemeanour at common law for a person to burn his own house, if it is contiguous to others (*R v Probert* (1799), 2 East, P O 1030)

(*m*) *R v Russell* (1842), Cr & M 511

(*n*) *R v Stallion* (1833), 1 Mood C C 398

(*o*) *R v Parker* (1839), 9 O & P 45

(*p*) *R v Russell*, *supra*

(*q*) Criminal Law Act, 1827 (7 & 8 Geo 4, c 28), s 8, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions As to the punishment of statutory arson, see p 772, *post*

(*r*) Malicious Damage Act, 1861 (21 & 25 Vict c 97), ss 1—5 42

(*s*) *Ibid*, s 1.

SECT. 5.  
Malicious  
Damage to  
Property.

any person being therein (a), (3) (b) to any house (c), any stable (d), coach-house, outhouse (e), warehouse, office, shop, mill, malthouse, hop-oast, barn (f), storehouse, granary, hovel, shed (g),

(a) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 2 It is sufficient to support the indictment, if the person charged was the only "person therein" at the time at which he committed the offence (*R v Pardoe* (1894), 17 Cox, C O 715), but the house which is set on fire must be in the possession of someone who lives there. When an indictment for setting fire to a common gaol occupied by none but prisoners described the gaol as a house and alleged in divers counts that it was in the possession of the gaoler and of the inhabitants of a liberty and of the justices and of persons unknown, and it appeared that the gaoler did not live in the gaol, it was held that the indictment could not be supported (*R v Connor* (1846) 2 Cox, C O 65). But it appears that the prisoner could have been convicted if the gaoler's house had been part of the gaol (*ibid*), see *R v Donovan* (1770), 1 Leach, 69, and *R v Kimbrey* (1851), 6 Cox, C O 464. It is also necessary that a person should be within at the moment when the house itself (as distinguished from an outhouse etc) is set on fire (*R v Warren* (1841), 1 Cox C O 68, *R v Fletcher* (1815), 2 Car & Kir 210). A person charged with this offence (without any charge of intent to injure or defraud any person) cannot be convicted of setting fire "to any house" under the Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 3, since for such latter offence the intent to defraud or injure is essential (*R v Paine* (1813), 1 Car & Kir 73, *R v Fletcher, supra*).

(b) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 3 A building intended for a house which is not finished is not a house within the meaning of this sub-section (*R v Piddell* (1867), 11 Cox, C O 132, *R v St Briavells (Inhabitants)* (1828), 8 B & C 461), nor is a building in which it is intended that workmen shall eat, and dry their clothes, a house within the meaning of this sub-section (*R v England* (1814), 1 Car & Kir 333).

(c) It is not necessary that the house should be furnished (*R v Kimbrey* (1851) 6 Cox C O 461).

(d) The building set on fire must have been a stable at the time of the offence, therefore an erection originally built for and used as a stable, but subsequently and at the date of the fire used for another purpose, is not a stable (*R v Colley* (1813), 2 Mood & R 475, *R v Munson* (1847), 2 Cox, C O 186), but a stable remains a stable until some intention has been shown of using it permanently for a different purpose (*R v Hammond* (1814), Cox, C O 60, and see also *R v Haughton* (1833), 5 O & P 555).

(e) A building to constitute an "outhouse" must be parcel of a dwelling-house (*R v St Briavells (Inhabitants)* (1828), 8 B & C 461, *R v Haughton* (1833) 5 C & P 550). Thus it does not include an unfinished dwelling house where materials are deposited (*R v St Briavells, supra*), or a building standing apart from the nearest dwelling house, and wholly unconnected therewith (*R v Haughton, supra*, *R v Ellison* (1832), 1 Mood C O 336) or a cart-hovel consisting of a stubble roof supported by uprights in a field at a distance from other buildings (*R v Parrot* (1834), 6 O & P 402). An erection within the curtilage of a dwelling-house may, however, be an outhouse though not actually adjoining, as a schoolroom separated from the dwelling-house by a narrow passage and partly covered by the roof thereof (*R v Winter* (1815), Russ & Ry 295), or a shed in a farmyard fenced in along with the dwelling house but not contiguous thereto (*R v Stallion* (1834), 1 Mood C O 398), or a pig-stye opening into a yard in common with the dwelling house and fenced in along with the dwelling house (*R v James* (1844), 1 Car & Kir 303, see also *R v North* (1795), 2 East, P C 1021). Where the erection is wholly unconnected with a dwelling house, the actual distance by which it is separated is immaterial (*R v Hammond* (1844), 1 Cox, C O 60).

(f) An unfinished dwelling-house used for the purpose of a barn is not a barn (*R v St Briavells (Inhabitants)* (1828), 8 B & C 461). A person who sets fire to a stack as a natural and probable consequence of which a barn is burnt, is indictable for setting fire to the barn (*R v Cooper* (1833), 5 C. & P 535).

(g) An erection used for storing building material has been held to be a shed

**SECT 5**  
**Malicious**  
**Damage to**  
**Property**

Arson by  
 statute

or fold, or to any farm building, or to any building (*h*) or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof (*i*), whether the same be in the possession of the offender or of any other person, with intent thereby to injure or defraud any person (*k*), (*l*) to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, port, dock, harbour, canal, or other navigation (*l*), (*m*) to any public building other than those above-mentioned belonging to the King or any county, riding, division, city, borough, poor law union, parish, or place, or any university or college or hall thereof, or any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution (*m*), (*n*) to any ship or vessel whether complete or unfinished (*n*), (*o*) to any mine of coal, cannel coal, anthracite, or other mineral fuel (*o*)

The punishment for any such offence is penal servitude for life or for not less than three years, or imprisonment for not more than two years with or without hard labour, or if the offender is a male under sixteen years, with or without whipping (*p*)

(*R v Imos* (1851), 5 Cox, C C 222, C O R but see *R v Munson* (1847), 2 Cox, C O 186) It makes no difference how the erection is covered in (*R v Imos, supra*)

(*h*) A dwelling-house that is unfinished may be a building within the meaning of this sub-section (*R v Manning* (1871), 12 Cox, C C 106, C O R), but *quare* not if the external walls are complete (*ibid, per KIRBY, C B*, at p 108)

(*i*) See *R v Munson* (1847), 2 Cox, C O 186

(*k*) It has been held that in an indictment for this offence it is not necessary to state to whom the house belongs (*R v Newbould* (1872), 12 Cox, C C 148, C O R) It was held in *R v March* (1828), 1 Mood C O 182 that there must be an intent to injure or defraud some third person not identified with the prisoner and therefore a wife setting fire to her husband's house for the purpose of doing him a personal injury did not commit an offence under stat (1827) 7 & 8 Geo 4, c 30, s 2, which is to the same effect as s 3 of the Malicious Damage Act, 1861 (24 & 25 Vict c 97) Since the Married Women's Property Act, 1882 (45 & 46 Vict c 76) (see ss 12 and 16), a husband may be found guilty of setting fire to his wife's house or a wife of setting fire to her husband's house, but no criminal proceedings for such an offence can be taken under that Act while the husband and wife are living together, nor while they are living apart as to any act done by one in respect of the property of the other while they were living together (see *ibid*, s 12) As to the intent to injure or defraud, see p 769, *ante*

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 4

(*m*) *Ibid*, s 5

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 42 A small pleasure boat, eighteen feet long, appears to be a "ship or vessel" for the purpose of this offence (*R v Bouwyer* (1851), 4 C & P 559) The same penalty is provided (*ibid*, s 43) where the setting fire is with intent to prejudice the owner, part-owner, or underwriters of "any policy of insurance upon such ship or vessel, or upon the freight thereof, or upon any goods on board the same" This offence may be committed by a person who is himself a part-owner (*R v Philp* (1830), 1 Mood C C 263, 272), and such part-owner may be guilty as accessory before the fact (*R v Wallace* (1841), Car & M 200) It has also been held that there may be an intent to prejudice the underwriter though no goods are "on board" the vessel (*R v Wallace, supra*) As to setting fire etc to His Majesty's ships, see p 773, *post* As to accidentally setting fire to a ship in the course of an unlawful act, see *R v Faulkner* (1877), 13 Cox, C O 550, C O R, and p 768, *ante*

(*o*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 26

(*p*) *Ibid*, ss 1-5, 26 42, Penal Servitude Act, 1891 (54 & 55 Vict c 69),



**1505** By statute (q) everyone is guilty of felony who unlawfully and maliciously sets fire (1) (i) to any building other than those above mentioned; (2) to any matter or thing being in, against, or under any building under such circumstances that if the building were thereby set on fire a felony would be committed (s), (8) who by any overt act attempts to set fire to any building or to any matter or thing being in, against, or under any building (i), or to any ship (a), or to any mine (b) under such circumstances that, if the same were thereby set fire to, the offenders would be guilty of felony.

**SECT 8**  
**Malicious**  
**Damage to**  
**Property.**

Setting fire  
to other  
buildings etc

The punishment for any such offence is penal servitude for not more than fourteen or for not less than three years, or imprisonment for not more than two years with or without hard labour, and if the offender is a male under the age of sixteen, with or without whipping (c)

**1506** By statute (d) everyone is guilty of felony who wilfully and maliciously sets on fire, or causes to be set on fire, or assists etc in setting fire to (1) any of the King's ships of war, whether afloat or being built, or begun to be built in any of the King's dockyards or in private yards, (2) any of the King's arsenals, magazines, dockyards, ropeyards, victualling offices, or any of the buildings erected thereon or belonging thereto, (3) any timber or materials there placed for building, repairing, or fitting out of ships, (4) any of the King's military naval, or victualling stores or other ammunition of war, (5) any place where such stores or ammunition are kept, placed, or deposited

Setting fire to  
the King's  
ships etc.

The punishment for this offence is death (e)

s 1, Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 71) Those offences are not triable at quarter sessions

(q) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 6, 7, 16

(i) *Ibid.*, s. 6 It is immaterial whether it is complete or incomplete (*R. v. Manning* (1871), 12 Cox, C. C. 106, C. C. R.) But possibly a house of which only the external walls are complete is not a building within the section (*ibid.*)

(s) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97) s. 7 A person does not commit this offence who merely sets fire to goods in a house without any intention of burning the house or injuring the owner of the house (*R. v. Child* (1871), 12 Cox, C. C. 64, C. C. R., *R. v. Nuttall* (1882), 15 Cox, C. C. 73, *R. v. Harris* (1882), 15 Cox, C. C. 75), and under such circumstances, even if the house is burnt, he is not guilty (*R. v. Batstone* (1804), 10 Cox, C. C. 20, *per WILLIAMS, J.*, at p. 22, *R. v. Nuttall*, *supra*, *per HAWKINS, J.*), but an intention to burn the house may be inferred where the prisoner knows that the probable result of his act will be the burning of the house, or is reckless whether the house catch fire or not (*R. v. Nuttall*, *supra*, *R. v. Harris*, *supra*)

(i) *Ibid.*, s. 27 As to what is an attempt by an overt act to set fire to a thing, see *R. v. Taylor* (1859), 1 F. & F. 511, where a defendant knelt down to a stack and struck a match intending to set fire to the stack, but discovering that he was watched, blew out the match and went away, and it was held that he was guilty of an attempt by an overt act to set fire to a stack.

(a) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 8

(b) *Ibid.*, s. 44

(c) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 6, 7, 8, 27, 41; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 This offence is not triable at quarter sessions

(d) Dockyards, etc. Protection Act, 1772 (12 Geo. 3, c. 24)

(e) *Ibid.*, s. 1 The offences under this Act are criminal whether committed in Great Britain or in any of the islands, countries, ports, or places thereunto belonging. The sentences of death under this statute may be recorded. The offence is not triable at quarter sessions

## SECT 5

**Malicious  
Damage to  
Property.**

Setting fire  
to vegetable  
produce  
Setting fire  
to crops

**1507.** Everyone is guilty of felony (*f*) who sets fire to certain specified vegetable produce (*g*)

The punishment for this offence is penal servitude for life or for not more than three years, or imprisonment, with or without hard labour, for not more than two years, and in the case of a male under sixteen years of age, with or without a whipping (*h*)

**1508** Everyone is guilty of felony who sets fire (*i*) to any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern wheresoever the same be growing (*k*)

The punishment for this offence is penal servitude for not more than fourteen or for not less than three years, or imprisonment with or without hard labour for any term not exceeding two years, and in the case of a male under sixteen years of age, with or without a whipping (*l*)

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 17

(*g*) Namely, to any stack of corn, grain, pulse, faves, hay, straw, haulm, stubble, or of any cultivated vegetable produce or of furze, or of heath, fern, turf peat, coal, charcoal, wood or bark, and to any 'steer' of red d or bark (*ibid*, s 17). It is not necessary to aver that the stack was thereby burnt (*R v Salmon* (1802) Russ & Ry 26), or that the prisoner then and there set fire to the stack (*R v Swathins* (1831), 4 C & P 318). An indictment for setting fire to a stack of beans or a stack of barley is good, beans being a species of pulse (*R v Woodward* (1831), 1 Mood C C 323), and barley a species of corn or grain (*R v Swathins, supra*), of which facts the court will take judicial notice. A mistake as to the name of the place where the offence was committed is immaterial (*R v Woodward, supra*). Material may be collected and "stacked" in a building as well as out of doors (*R v Munson* (1817), 2 Cox, C C 186), but an indictment for setting fire to a "cock" of hay is bad, but the indictment would, it seems, be good if drawn under s 16 of the Malicious Damage Act, 1861 (*R v McKiver* (1871), 5 T R C 1, 86). A parcel of unthreshed wheat is not a "stack" (*R v Judd* (1788) 1 Leach, 464). A quantity of straw on a lorry, though it may have been taken from a stack, is not a "stack" of straw (*R v Satchwell* (1873), 12 Cox, C C 149, C C R), and a score of faggots piled in a loft made by a temporary floor over an archway between two houses is not a stack of wood (*R v Aris* (1834), 6 C & P 348), with regard to the material itself, a stack of flax with the seed in it may be described as a stack of grain (*R v Spencer* (1856), 7 Cox C C 189, C C R), but a stack of stubble (*R v Reader* (1830), 4 C & P 215), or a stack of which the lower part is cole seed straw, and the upper part wheat stubble is not a stack of straw (*R v Tottenham* (1835), 7 C & P 231), nor is a stack of sedge and rushes a stack of straw (*R v Baldock* (1846), 2 Cox, C C 35). Straw in this section means straw of wheat, barley, oats and rye.

(*h*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 17, Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1. The offence is not triable at quarter sessions.

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 16

(*k*) *Ibid*. Flax with the seed in it may be described as grain (*R v Spencer* (1856), 7 Cox, C C 189, C C R). A single detached tree is not "a part of a wood" (*R v Davy* (1814), 1 Cox C C 60, decided under the corresponding words of stat. (1827) 7 & 8 Geo 4, c 30, s 17), but if a wood is unlawfully and maliciously fired, the means whereby the offence is committed are immaterial, therefore a prisoner is guilty if he sets fire to a summer house in a wood, and the wood is burnt in consequence of such act (*R v Price* (1841), 9 C & P 729).

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict c 97) s 16. Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions.

**1509** Everyone who by any overt act attempts to set fire to any stack of corn etc or to any crop of hay etc (*m*) under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, is also guilty of felony

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Malicious  
Damage to  
Property

The punishment for such an offence is penal servitude not exceeding seven and not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*n*)

Attempt to  
set fire to  
stack of corn  
etc.

#### SUB-SECT 3—Injury by Explosives

**1510** Everyone is by statute (*o*) guilty of felony who unlawfully and maliciously causes by any explosive substance (*p*) an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not

Causing  
explosion  
likely to  
endanger  
life etc

The punishment for this offence is penal servitude for life, or for any term not less than three years, or imprisonment with or without hard labour for not more than two years (*q*)

**1511** Everyone is by statute (*r*) guilty of felony who unlawfully or maliciously within or (being a subject of the King) without the King's dominions (1) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property, (2) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to cause such injury etc. The offence is complete whether or not any explosion takes place or any injury to person or property has been actually caused

Doing act  
with intent  
to cause  
explosion.

The punishment for these offences is penal servitude for not more than twenty or not less than three years, or imprisonment for not more than two years with or without hard labour, on condition the explosive substance is to be forfeited (*s*)

**1512** Everyone is by statute (*t*) guilty of felony who makes or knowingly has in his possession or under his control any explosive

Making  
explosive  
substances

(*m*) See Malicious Damage Act, 1861 (24 & 25 Vict c 97), ss 16, 17

(*n*) *Ibid*, s 18, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is not triable at quarter sessions As to threatening to set fire to buildings etc see p 791, *post*

(*o*) Explosive Substances Act, 1883 (46 Vict c 3), s 2

(*p*) As defined in s 9, namely, "any materials for making any explosive substance, also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance, also any part of any such apparatus, machine or implement", see *R v Charles* (1892), 17 Cox, C C 499

(*q*) Explosive Substances Act, 1883 (46 Vict c 3), s 2, and see Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(*r*) Explosive Substances Act, 1883 (46 Vict c 3), s 3

(*s*) *Ibid*, s 3, and see Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions

(*t*) Explosive Substances Act, 1883 (46 Vict c 3), s 4 (1).

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**Malicious**  
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**Property**

substance under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object

The punishment for this offence is penal servitude for not more than fourteen or for not less than three years, or imprisonment for not more than two years with or without hard labour, and forfeiture of the explosive substance (*u*)

**Accessory to**  
**crime under**  
**Explosive**  
**Substances**  
**Act, 1883**

**1513** Every person is guilty of a felony (*a*) who within (or being a subject of the King without) the King's dominions by the supply of or solicitation for money, the finding of premises, the supply of materials, or in any manner whatever is accessory to the commission of any crime under the Explosive Substances Act, 1883 (*b*)

Such person may be tried and punished in the same manner as if he had been guilty as a principal (*c*)

Under the Explosives Act, 1875 (*d*), in the case of certain offences (*e*) against the Act, punishable on summary conviction, penalties are imposed and the forfeiture of certain explosives and ingredients is directed

**Destruction**  
**of building by**  
**gunpowder**

**1514** Everyone is by statute (*f*) guilty of felony who unlawfully and maliciously by the explosion of gunpowder or other explosive substance destroys, throws down, or damages the whole or any part of any dwelling-house, any person being therein, or any building whereby the life of any person is endangered

(*u*) Explosive Substances Act, 1883 (46 Vict c 3), s 4 (1), Penal Servitude Act, 1891 (51 & 52 Vict c 69), s 1 This offence is not triable at quarter sessions

(*a*) Explosive Substances Act, 1883 (46 Vict c 3), s 5 This offence is not triable at quarter sessions

(*b*) 46 Vict c 3

(*c*) *Ibid*, s 5 As to inquests under this Act see title EXPLOSIVES

In an indictment under the Explosive Substances Act, 1883 (46 Vict c 3), the same criminal act may be charged in different counts as constituting different crimes, and the prosecutor is not to be put to his election on which count he will proceed (*ibid* s 7 (2)) For all purposes of and incidental to arrest, trial, and punishment, a crime under the Act committed out of the United Kingdom is deemed to have been committed in the place in which the prisoner is apprehended, or is in custody (*ibid*, s 7 (3), see p 277 *ante*) The Act does not exempt any person from criminal proceedings at common law or under some other statute but no person may be punished twice for the same criminal act (*ibid*, s 7 (4))

(*d*) 38 Vict c 17

(*e*) See *ibid*, ss 9, 10, 13, 19, 22, 31, 32-37, 43, 63, 77 Most of these offences are punishable with pecuniary penalties but if the offence is calculated to endanger the safety or cause serious personal injury to any of the public or the persons employed in or about any factory etc., or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, a sentence of imprisonment, with or without hard labour, for not more than six months may be imposed (*ibid*, s 79). Offences under the Act may be prosecuted and penalties recovered and the forfeitures enforced either on indictment or before a court of summary jurisdiction (*ibid*, s 91) But a court of summary jurisdiction cannot impose a penalty exceeding £100 or award a term of imprisonment for a longer period than one month See for these offences title EXPLOSIVES

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 9

To constitute this offence there must be an intent to destroy etc. a house, a mere act of wanton mischief or assault is not within the statute (*g*). In order to "endanger the life" of any person it is not necessary that any person should receive any actual injury, provided he is put into peril (*h*), nor is it necessary that he should be within the building at the time of the danger (*h*). But his life must be endangered as a result of the damage done to the building specified in the indictment. Evidence of damage to other buildings which may be inhabited is not admissible for the purpose of proving the endangering of life, but is admissible to show that the explosion was violent and calculated to do damage (*h*).

SECT. 5.  
Malicious  
Damage to  
Property

The punishment for this offence is penal servitude for life or for any period not less than three years, or with imprisonment for any term not exceeding two years with or without hard labour, and if the offender is a male under the age of sixteen years, with or without whipping (*i*).

**1515** Everyone is by statute (*k*) guilty of felony who unlawfully and maliciously places or throws any gunpowder or other explosive substance in, into, upon, under, against, or near any building with intent to destroy or damage any building or any engine, machinery, working tools, fixtures, goods, or chattels, whether or not any explosion takes place or any damage is caused.

Placing etc.  
gunpowder in  
building etc

Though it is not necessary to constitute this offence that any explosion should take place, nevertheless it must be shown that the explosive substance was in a condition to explode at the time it was thrown (*l*).

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment for not more than two years with or without hard labour, or if the offender is a male under sixteen years of age, with or without whipping (*m*).

There are various statutory provisions under which searches for and seizures of explosives can be made (*n*).

#### SUB-SECT. 4.—Riotous Demolition

**1516** All persons are by statute guilty of felony who, being riotously and tumultuously assembled together to the disturbance

Riotous  
demolition of  
churches,  
houses etc

(*g*) *R v Brown* (1861), 3 F & F 821

(*h*) *R v McGrath* (1881), 14 Cox, C C 398

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 9, Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s 1. This offence is not triable at quarter sessions.

(*k*) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), ss 10, 45

(*l*) Thus, throwing or placing a bottle of gunpowder into a building without a lighted fuse or other means to cause an explosion would not be within the statute, but placing a bundle of lucifer matches against a window would be within the statute, because they are already in a condition to explode by contact (*R v Sheppard* (1868), 19 L T 19).

(*m*) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 10, Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s 1. This offence is not triable at quarter sessions.

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 55, Explosives Act, 1875 (38 Vict. c 17), ss 73—75, Explosive Substances Act, 1883 (46 Vict. c 3), s 8 (1). See title EXPLOSIVES. As to arrest without warrant of persons suspected of offences connected with explosive substances under this Act, see Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 61, Explosives Act, 1875 (38 Vict. c 17), s 78.

**SECT 5**  
**Malicious**  
**Damage to**  
**Property.**

of the public peace, unlawfully and with force demolish, or pull down, or destroy, or begin to demolish, pull down, or destroy — (1) any church, chapel, meeting-house, or other place of divine worship, (2) any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel or fold, or any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof (*o*), (3) any public building, other than those specified above, belonging to the King, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university or college, or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription, (4) any fixed or movable machinery prepared or employed in any manufacture or any branch thereof, (5) any steam engine or other engine for sinking, working, ventilating, or draining any mine, or any staith, building, or erection (*p*) used in conducting the business of any mine, or any bridge, waggonway, or truck for conveying minerals from any mine (*q*)

**Evidence**

**1517** To support a charge of riotously beginning to demolish a house it is necessary to prove that the object of the rioters was to demolish the house, and that they would have demolished it, if they had carried out their intentions (*i*)

Demolition means such demolition as leaves the house no house at all (*a*) It is not necessary that no stone should be left standing (*b*), but it is not enough that the house should be reduced to a dilapidated state if it still remains a house, no injury short of the actual demolition of the walls is sufficient (*c*)

If the rioters intended to demolish the house it is immaterial that they acted with some further motive in view, such as to injure

(*o*) These erections are similar to those enumerated in the Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 3, which imposes penalties for arson (see p 770, *ante*), except that storichouse and farm building are here omitted For decisions as to the meanings of the various terms used, see p 770, *ante*

(*p*) A scaffold raised above the bottom of a mine for working a vein of coal level with the scaffold is an erection used in conducting the business of a mine (*R v Whittingham* (1840), 9 C & P 234) As to what is a riot, see p 471, *ante*

(*q*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 11

(*r*) *R v Thomas* (1830), 4 C & P 237, *R v Howell* (1839), 9 C & P 437 (see *Drake v Eootitt* (1881) 7 Q B D 201) These cases were decided on the repealed stat (1827) 7 & 8 Geo 4, c 30, s 8, the wording of which is reproduced in the Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 11 If once the intention is proved and some act in pursuance thereof, the fact that completion of the intention was prevented is immaterial, but if the mob desist of their own accord before complete demolition, this is some evidence from which the jury may infer that there was no intention to demolish (*R v Howell, supra*) Destroying movable shop shutters is not beginning to demolish a house, as the shutters are not part of the freehold (*R v Howell, supra*)

(*a*) *R v Langford* (1812), Car & M. 602, C C R, per PATTESON, J

(*b*) *R v Langford, supra*, *R v Phillips* (1842), 2 Mood. C C 252 (where the chimney was left standing)

(*c*) *R v Adams* (1842), Car & M 299.

**SECT. 5.  
Malicious  
Damage to  
Property.**

someone there (d), injury done not with the object of demolishing the house, but merely with a view to seizing a person who has taken refuge there, does not constitute the offence (c), nor does the demolition of a house in the assertion of a supposed right, although the demolition is accompanied by a riot (f).

The demolition may be accomplished as well by fire as by any other means (g), and in such case it is not necessary that the offender should be indicted for arson (h). Where a house has been demolished by fire by rioters, a rioter who was present after the commencement of the demolition may be convicted as a principal, although there may be no proof that he was present at the time the fire was lighted (i).

Persons are "riotously" assembled together where their assembly is attended with circumstances of alarm or terror to any of the King's subjects (j).

The punishment for any such offence is penal servitude for life or for any term not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (k).

**1518** All persons are by statute (l) guilty of a misdemeanour who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any church or any of the erections or things specified above (m).

**Damage to  
churches etc.  
by rioters.**

The punishment for this offence is penal servitude for not exceeding seven years and not less than three years, or imprisonment not exceeding two years with or without hard labour (n).

(d) *R v Howell* (1839), 9 C & P 417, *R v Batt* (1834), 6 C & P 320

(e) *R v Price* (1833), 6 C & P 510

(f) *R v Langford* (1842), Car & M 602, C C R. As to assertion of a supposed right, see p 769, *ante*. See *R v Clemens*, [1898] 1 Q B 556, C C R.

(g) *R v Howell* (1839), 9 C & P 417

(h) *R v Harris* (1842), Car & M 661, *R v Whiston* (1842), 2 Dougl (N S) 408

(i) *R v Simpson* (1812), Car & M 669. This is on the ground that the offence consists not simply in the fact of destroying a house by fire, but in the combined fact of riotously assembling, and during the riot demolishing the house. A person may be convicted of the offence who during the demolition of a house by fire has thrown articles of furniture into a fire which has been made outside the house, if the jury find that he was knowingly encouraging and taking part in the general design of destroying the house and furniture (*R v Harris* (1842), Car & M 661).

(j) Even to one person (*R v Langford* (1842), Car & M 602, C C R), see *Field v Metropolitan Police (Receiver)*, [1907] 2 K B 853. See p 471, *ante*.

(k) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 11, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. This offence is not triable at quarter sessions.

(l) Malicious Damage Act, 1861 (24 & 25 Vict c 97) s 12. Any person put on trial for demolishing etc under s 11 may be found guilty of injuring under s 12 and punished accordingly. The object of s 12 is to provide for cases where there is no sufficient evidence of an intention to proceed to the total demolition of a house etc, and where no such intent ever existed, but where there is a riot and injury done (Greaves, Criminal Consolidation Acts, 2nd ed., 218).

(m) See p 778, *ante*.

(n) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 12. This offence is not triable at quarter sessions.

## SECT. 5

**Malicious  
Damage to  
Property.**Injury to  
house by  
tenants.SUB-SECT 5.—*Demolition by Tenants*

**1519** Everyone is by statute (o) guilty of a misdemeanour who, being possessed of a dwelling house or other building or part thereof, held for any term or at will, or held over after termination of a tenancy, unlawfully and maliciously pulls down or demolishes or begins to pull down or demolish the same or any part thereof, or pulls down or severs any fixtures affixed thereto (p)

The punishment for these offences is imprisonment without hard labour, or fine, or both (q)

SUB-SECT 6.—*Damaging Goods being Manufactured etc*Damaging  
goods in  
course of  
manufacture  
etc.

**1520** Everyone by statute (r) commits a felony who unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or render useless (1) any goods or article of silk, woollen, linen, cotton, hair, mohair, or alpaca (or any one or more of these materials mixed with each other or with another material), framework-knitted piece, stocking, hose, or lace in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage of manufacture (s), or (2) any warp or shuttle of the above-mentioned materials, (3) any fixed or movable loom, frame, machine, engine, rack, tackle (t), tool, or implement used in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles

(o) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 13 As to damage done in the course of a riot, see p 777, *ante*

(p) As to what persons may be considered in "possession," see *R v Ball* (1824), 1 Mood C C 30, *R v Connor* (1846), 2 Cox, C C 65, *R v Wallis* (1832), 1 Mood C C 344, *R v Allison* (1843), 1 Cox C C 24, *R v Kimbrey* (1804), 6 Cox, C C 461 As to fixtures, see title LANDLORD AND TENANT

(q) This offence is triable at quarter sessions

(r) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 14 The word "feloniously" must be used in the indictment for such an offence (*R v Gray* (1864), 9 Cox, C C 417 C C R so also must the words "unlawfully and maliciously" (*R v Lewis* (1830), 2 Russell on Crimes, 799) An indictment in such a case alleging that an offence was committed "feloniously, voluntarily and maliciously" instead of "unlawfully and maliciously" is bad (*R v Reader* (1830), 4 C & P 245)

(s) The process of manufacture continues until the article is fit for immediate sale Therefore an article which is complete so far as manufacture and texture are concerned but requires to be dyed before it will be fit for the market, is still in process of manufacture (*R v Woodhead* (1836) 1 Mood & R 549, decided under the corresponding words in the stat (1827) 7 & 8 Geo 4, c 30, s 3)

(t) Malicious cutting of tackle is a complete offence, and it is unnecessary to aver or prove an intent to destroy or render it useless (*R v Smith* (1853), 8 Cox, C C 128) The cords used to raise the "harness" or working body of a loom constitute tackle (*ibid*) Quere, whether the cutting of the "thrum" (i.e., the ends of the woollen threads generally left in the machine when the cloth is finished) is an offence, cutting the thrum is not cutting warp, but the fact that the prisoner cut the thrum may be given in evidence in support of a count for cutting "tackle" in order to show that the act was done maliciously (*ibid*.)

The wording of the section is different from that of the stat (1827) 7 & 8 Geo 4, c. 30, and the cases under that statute are no longer applicable as authorities for cases under s 14 (see *R v Legg* (1848), 3 Cox, C C 295) The removal of part of a frame without which the frame is imperfect and inoperative is "damaging" a frame, although the removed part is capable of being replaced and so making the frame complete and workable (*R v Tacey* (1821), Russ. & Ry 452; compare *R v Fisher* (1865), L R 1 C C 7, C C R.)



The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, or if the offender is a male under sixteen, whipping (u).

SECT. 8.  
Malicious  
Damage to  
Property.

**1521** Anyone is by statute (a) guilty of felony who by force enters any house, shop, building, or place with intent to commit any such offence

Forceful  
entry

The punishment is the same as for the last-mentioned offence (b).

**1522** Everyone by statute (c) commits a felony who unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or render useless, (1) any fixed or movable machine or engine used, or intended to be used, for sowing, reaping, mowing, threshing, ploughing, or drawing, or for performing any other agricultural operation (d), (2) any machine or engine (e), or any tool or implement fixed or movable prepared for or employed in any manufacture other than that of the goods or articles specified in the description of the last-mentioned offences

Injury to  
machinery

The punishment for any such offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (f)

#### SUB-SECT 7—Destroying Trees etc

**1523** Everyone commits a felony (g) who unlawfully and maliciously cuts or otherwise destroys any hop-bunds growing on poles in any plantation of hops

Destroying  
hop-bunds

The punishment is penal servitude for not more than fourteen nor

(u) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 14 Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s 1

(a) *Ibid*

(b) *Ibid*

(c) *Ibid*, s 15

(d) Such displacement of parts of a machine as will prevent the machine from working, and may ultimately cause damage to result, constitutes "damage" to a machine, although if the displaced parts be restored the machine will become workable (*R v Fisher* (1863), L R 1 O O C. 7, O O R, compare *R v Tacey* (1821), Buss & R, 452, and even a displacement or disarrangement of a machine which causes a trifling injury without preventing the machine from working constitutes "damage" (*R v Foster* (1852), 6 Cox, O O 25)

(e) The "silling" on which a machine rests is part of the machine (*R v Foster, supra*)

(f) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 15. An indictment under this section must allege that the act was done "feloniously" (*R v Gray* (1864), 9 Cox, C C 417, O O R) In order to constitute this offence it does not appear to be necessary that the machine should be pieced together and ready for use, it may have been taken to pieces and be in different places (*R v Mackerel* (1831), 4 O & P 448, or certain parts not essential to the working may be wanting (*R v Bartlett* (1831), 2 Deacon, Digest of Criminal Law, 1517, *R v Chubb* (1831), 2 Deacon, Digest of Criminal Law, 1517; and see note (d), *supra*) Where a machine has already been so far destroyed as to be incapable of working the destruction of the remaining parts is not the destruction of a "machine" (*R v West* (1831), 2 Deacon, Digest of Criminal Law, 1518) This offence is triable at quarter sessions

(g) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s. 19.

**§ 507 5**  
**Malicious**  
**Damage to**  
**Property.**  
 —  
**Destroying**  
**trees**

less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, whipping (*h*).

**1524** Everyone by statute (*v*) commits a felony who unlawfully and maliciously cuts, breaks, buks, roots up, or otherwise destroys or damages (*k*) (1) the whole or part of any tree, sapling, or shrub, or any underwood growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the damage done exceeds the value of £1 (*l*), (2) the whole or any part of any tree etc growing elsewhere than in the places above specified, if the damage done exceeds £5 (*m*)

The punishment for such an offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years, and in the case of a male under sixteen, with or without a whipping (*n*)

If the damage done to such tree, sapling, shrub, or underwood (wherever the same may be growing) amounts to 1s at the least, the offender may be tried summarily and fined or imprisoned (*n*) But anyone who, having been twice convicted of this offence, again commits such offence is guilty of an indictable misdemeanour The punishment on conviction of such misdemeanour is imprisonment, with or without hard labour, and if the offender is a male under sixteen, with or without whipping (*o*)

**Destroying**  
**plants etc**

**1525** It is an offence punishable on summary conviction (*p*) to destroy or damage with intent to destroy any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot-house, green-house, or conservatory But anyone who,

(*h*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 19, Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1 To constitute the offence of "destroying," it is necessary to show that the plant was not merely crushed, but killed (*R v Boucher* (1841), 1 Jur 709), as to setting fire to crops or stacks of corn, see p 771, ante The offence is triable at quarter sessions

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 20

(*k*) In *R v Taylor* (1819) Russ & R 373, decided under a statute (9 Geo 1, c 22) which makes it an offence to cut down or otherwise destroy, it was held that the cutting down of trees without destroying them was an offence within that Act It therefore seems that it is an offence under the Malicious Damage Act, 1861 (24 & 25 Vict c 97), to cut etc trees although they are not totally destroyed

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict c 97) s 20 The indictment should state that the damage was done "unlawfully and maliciously", "feloniously" is not enough (*R v Lewis* (1830), 2 Russell on Crimes, 799)

(*m*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), ss 20, 21 Penal Servitude Act, 1891 (54 & 55 Vict c 69) s 1 Damage to the amount specified must be done all at one time (*R v Williams* (1862), 9 Cox, C C 338, C O R. (1)), and must be exclusive of consequential damage (*R v Whiteman* (1854), 6 Cox, C C 370, C O R.)

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 22, see too, *ibid*, s. 53

(*o*) *Ibid* The offence is triable at quarter sessions

(*p*) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 23 The punishment is imprisonment with hard labour for not more than six calendar months. It is necessary in any such case to prove the intent to destroy or damage, but if any plant etc is destroyed or damaged the intent may be inferred, but if there is no destruction or substantial damage no offence is committed (*Eley v Lytle* (1835), 50 J P. 308)

having been convicted of this offence, again commits such offence commits a felony (q).

The punishment for such felony is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for two years, and if the offender is a male, with or without a whipping (r).

SUB-SECT 3—*Injuries to Mines etc*

**1526.** Everyone by statute (s) commits a felony who unlawfully and maliciously (1) causes water to be conveyed or run into any mine or subterranean passage communicating therewith with intent thereby to destroy or injure such mine, or hinder or delay the working thereof (t), (2) with the like intent fills up, obstructs, or damages with intent to destroy, obstruct, or render useless any airway, waterway, drain, pit, level, or shaft of or belonging to any mine (t), (3) pulls down or destroys or damages with intent to destroy or render useless any steam engine (a) or other engine for sinking, draining, ventilating, or working or assisting in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connection with any such steam engine or other engine, or any stailh, building, or erection (b) used in conducting the business of

Injury to  
mines

(q) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 23

(r) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is triable at quarter sessions. The offence of unlawfully and maliciously destroying etc any cultivated root used for the food of man or beast or for medicine, distilling or dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground, is only punishable on summary conviction (Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 24). The offence of unlawfully and maliciously cutting, beating, throwing down, or destroying any fence of any description, or any wall, stile, or gate, or part thereof, is also punishable only on summary conviction (*ibid*, s 25).

(s) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 29

(t) This provision does not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working (Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 28). As to setting fire to mines, see p 772, *ante*. In *R v Jones* (1841), 2 Mood C C 293, in an indictment under the stat 7 & 8 Geo 4, c 40, s 6, it was held that the mine might be laid as the property of the person in possession of and working it though only an agent for others. *Quare* whether in an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict c 97), it is necessary to allege or prove whose the property injured is (see *R v Newbould* (1872), 12 Cox, C C 148, C C R). A person who closes the airway of a mine in the exercise of a supposed right does not commit a criminal offence for in such case he cannot be said to be acting maliciously (*R v Matthews* (1876), 14 Cox, C C 5).

A servant who closes such airway under orders of his master, believing his master's allegation that he has a right so to close it, does not commit a criminal offence, even though the master knows he has no such right, but if the servant knows that the master is acting maliciously he is guilty of the offence (*R v James* (1837), 8 C & P 131).

(a) Damage to a cylinder (known as a "drum") which a steam engine causes to revolve and take up rope is not damage to the steam engine (*R v Whittingham* (1840), 9 C & P 234). To set a steam engine going without the machinery being attached, so that the engine works with great velocity and is damaged, is to damage the steam engine (*R v Norris* (1840), 9 C & P 241).

(b) A scaffold erected above the bottom of a mine for working a vein of coal on a level with the scaffold is an erection used in conducting the business of a mine (*R v Whittingham* (1840), 9 C & P 234).

SECT. 5  
Malicious  
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Property.

**SECT. 5**  
**Malicious**  
**Damage to**  
**Property.**

any mine, or any bridge, waggonway or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggonway, or trunk be completed or in an unfinished state (c); or (4) who unlawfully and maliciously stops, obstructs, or hinders the working of such steam or other engine, appliance, or apparatus, with intent thereby to destroy or damage any mine, or hinder, obstruct, or delay its working (d), (5) wholly or partially cuts through, severs, breaks, or unfastens, or damages, with intent to destroy or render useless, any rope, chain, or tackle (of whatsoever material) used in any mine, or in or upon any inclined plane, railway, or other way, or other work whatsoever, in anywise belonging or appertaining to, or connected with, or employed in any mine or the working or business thereof.

The punishment for any such offence is penal servitude for not more than seven or not less than three years, or imprisonment, with or without hard labour, for not more than two years, and if the offender is a male, with or without a whipping (e).

**SUB-SECT. 9 —Injuries to Seabanks etc**

**Injury to**  
**seabanks etc**

**1527.** Everyone by statute (f) commits a felony who unlawfully and maliciously breaks down, or cuts down, or otherwise damages or destroys, any seabank or seawall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be or be in danger of being overflowed or damaged, (2) throws, breaks, or cuts down, levels, undermines, or otherwise destroys any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without whipping (g).

**Injury to**  
**seawalls,**  
**waterways**  
**etc.**

**1528** Everyone by statute (h) commits a felony who unlawfully and maliciously cuts off, draws up, or removes any piles, chalk, or other materials, fixed in the ground and used for securing any seabank or seawall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or opens or draws up any floodgate or sluice, or does any other injury or mischief to any navigable river or canal with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or

(c) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 29

(d) *Ibid.*

(e) *Ibid.*, ss. 28, 29; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.

(f) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 30

(g) *Ibid.*, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(h) *Ibid.*, s. 31.

without hard labour, and if the offender is a male under sixteen years of age, a whipping (i).

SECT. 4.  
Malicious  
Damage to  
Property.

Destroying  
dams etc.

**1529.** Any person is by statute (k) guilty of a misdemeanour (1) who unlawfully and maliciously cuts through, breaks down, or otherwise destroys any dam, floodgate, or sluice of any fishpond, or water which is private property, or in which there is any private right of fishery, with intent to take or destroy, or so as to cause the loss or destruction of the fish therein, or puts any lime or other noxious material in any such pond or water, or in any salmon river (l), with intent to destroy any fish that may there be or may thereafter be put therein, (2) cuts through, breaks down or otherwise destroys or injures the dam or floodgate of any mill-pond, reservoir, or pool.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (m).

#### SUB-SECT 10—Injuries to Bridges etc.

**1530** Everyone by statute (n) commits a felony who unlawfully and maliciously (1) pulls or throws down, or in anywise destroys, any bridge, whether over any stream of water or not, viaduct, or aqueduct, over or under which any highway, railway, or canal shall pass, or (2) does any injury with intent to render, and so as in fact to render, such bridge, viaduct, or aqueduct, or the highway,

Destroying  
bridges etc.

(i) Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. An Act of Parliament making it an offence to place an obstruction within ten feet of high water mark of a haven only applies to an obstruction in a place where a right of way exists, and does not take away the rights of individuals where there is no such right of way (*Harrod v Worship* (1861), 1 B & S 381).

(k) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 32, Salmon Fishery Act, 1873 (36 & 37 Vict c 71), s 13, and see title FISHERIES.

(l) See Salmon Fishery Act, 1873 (36 & 37 Vict c 71), s. 13, and *R v Vasey*, [1905] 2 K B 748, O C R.

(m) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 32, Salmon Fishery Act, 1873 (36 & 37 Vict c 71), s. 13, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1. The offence is triable at quarter sessions. Persons also incur penalties under the Salmon Fishery Act, 1861 (24 & 25 Vict c. 109), s 5, who, otherwise than in the exercise of any right, cause or knowingly permit to flow, or put or knowingly permit to be put, into any waters containing salmon, or any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill the fish. Even where a person does any such act in pursuance of a legal right he must use reasonable means to render such matter harmless. The Act is not intended either to prevent a person from acquiring a legal right, or to legalise any act or default which but for this Act would be a nuisance (*ibid*), these penalties are recoverable on summary conviction. Penalties recoverable on summary conviction are also incurred by persons who use dynamite or other explosive substance to catch or destroy fish either in a public fishery or in any private water. See Fisheries (Dynamite) Act, 1877 (40 & 41 Vict. c 65), s 2; Freshwater Fisheries Act, 1878 (41 & 42 Vict c 39), s 12. The manufacture, sale, or exposing for sale at any place within the British Islands of any instrument serving only or intended to damage or destroy fishing implements by cutting or otherwise is also punishable on summary conviction (See Fisheries Act, 1883 (46 & 47 Vict. c. 22), s 9). See also title FISHERIES.

(n) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 33, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions. See also title HIGHWAYS, STREETS, AND BRIDGES.

**SECT 5**  
**Malicious**  
**Damage to**  
**Property.**

railway, or canal passing over or under the same, or any part thereof, dangerous or impassable

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (o)

**Destroying**  
**toll-bars etc**

**1531** Everyone is by statute (p) guilty of a misdemeanour who unlawfully and maliciously throws down, levels, or otherwise destroys in whole or in part any turnpike, gate, or toll-bar, wall, chain, rail, post, bar, or other fence (q) belonging thereto, or set up to prevent passengers passing by without paying any statutory toll, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll

The punishment for this offence is imprisonment with or without hard labour, or fine, or both (r)

#### SUB SECT 11 — *Injuries to Railways*

**Obstructing**  
**railways**

**1532** Everyone by statute (s) commits a felony who unlawfully and maliciously puts, places, casts, or throws upon or across any railway, whether public or private (a), any wood, stone, or other matter or thing, or takes up, removes, or displaces any rail, sleeper, or other thing belonging to any railway, or turns, moves, or diverts any points or other machinery belonging to any railway, or makes or shows, hides, or removes any signal or light on or near any railway, or does or causes to be done any other act with intent to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway (b)

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (c)

(o) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 33

(p) *Ibid*, s 34. Since the passing of the Act turnpike roads have almost if not entirely ceased to exist, but the provisions of the section may still be of practical importance with regard to toll-bars, toll houses, weighing machines etc

(q) *Ibid*

(r) The offence is triable at quarter sessions.

(s) *Ibid*, s 35

(a) *O'Gorman v Sweet* (1890), 54 J P 663

(b) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 35. Such an act done out of mischief, without the design of injuring anyone, may be malicious (*E v Upton* (1851), 6 Cox, C. C 298). As to malice generally, see p 768, ante. A master is liable for the acts of his servants if he stands by while such acts are being done and encourages or orders them to do such acts (*Robert v Preston* (1860), 9 C B (N s) 208). Anyone who without lawful excuse (the proof whereof lies on the defendant) interferes with, removes, or alters any part of a tramway, or of the works connected therewith, or places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway, or does or causes to be done anything in such manner as to obstruct any carriage using a tramway or to endanger the lives of persons therein or thereon, or knowingly aids or assists in the doing of any such thing, is liable on summary conviction (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding £5 (Tramways Act, 1870 (33 & 34 Vict c 78), s 50). And see title TRAMWAYS AND LIGHT RAILWAYS

(c) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 35, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1. The offence is not triable at quarter sessions.

**1533** Everyone is by statute (*d*) guilty of a misdemeanour who by any unlawful act, wilful omission, or neglect, obstructs, or causes to be obstructed, any engine or carriage using any railway, or aids or assists therein

SECT. 6  
Malicious  
Damage to  
Property

The punishment is imprisonment not exceeding two years, with or without hard labour (*e*)

Obstructing  
Trains.

#### SUB-SECT 12—*Injuries to Telegraphs*

**1534** Everyone is by statute (*f*) guilty of a misdemeanour who unlawfully and maliciously cuts, breaks, throws down, destroys, injures, or removes any battery, machinery, wire, cable, post, or other matter or thing being part of, or used in or about the working of any electric or magnetic telegraph, or prevents or obstructs in any manner the sending, conveyance, or delivery of any communication by any such telegraph

Injury to  
telegraphic  
apparatus

The punishment for this offence is imprisonment not exceeding two years, with or without hard labour (*g*)

#### SUB-SECT 13—*Destroying Articles in Public Museum*

**1535** Everyone is by statute (*h*) guilty of a misdemeanour who unlawfully and maliciously destroys or damages (1) any book, manuscript, picture, print, statue, bust, or vase, or other article or thing kept for the purposes of art, science, or literature, or as an object of curiosity in any public museum, gallery, cabinet, library, or other repository which is either at all times, or from time to time, open to the public or any considerable number of persons by permission of the proprietor or by payment of money, (2) any picture, statue, monument, or other memorial of the dead, painted glass or other ornament or work of art in any church, chapel, or

Destroying  
books etc  
in public  
museum

(*d*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 36

(*e*) *Ibid* The offence is triable at quarter sessions. See also Railway Regulation Act, 1840 (3 & 4 Vict c 97), ss 13, 14, 16. As to offences by railway servants and other persons upon railways, see title RAILWAYS AND CANALS. The offence of obstructing under s 36 of the Malicious Damage Act, 1861 (24 & 25 Vict c 97), is committed by any person who, otherwise than by accident, leaves on a railway line any substance likely to cause an obstruction, though his object may not have been to create such obstruction, but merely to give the company's servants the trouble of removing the obstruction (*R v Holroyd* (1841), 2 Mood & R 339), or though the line may not yet be open to the public, and though no actual obstruction may have taken place (see *R v Bradford* (1860), 8 Cox, C C 309, C C R). The obstruction contemplated is not confined to a physical obstruction. A person who improperly goes on a railway line and by raising his arms induces a driver to diminish speed is guilty of the offence (*R v Hardy* (1871), L R 1 C C R 278), see also *R v Hadfield* (1870), L R 1 C C R 253, in which case a drunken man got on a railway and turned the signals, thereby causing a luggage train to go very slowly, and he was held to have obstructed an engine and carriages within the meaning of the section. Moving points or other machinery of a railway with malicious intent is a felony under the Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 35 (see p 786, ante).

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 37

(*g*) *Ibid* Or the offender may be tried summarily and fined or imprisoned (*ibid*). Anyone who unlawfully and maliciously by any overt act attempts to commit any such offence is liable to be tried summarily and fined or imprisoned (*ibid*, s 38). This offence is triable at quarter sessions. And see title TELEGRAPHS AND TELEPHONES.

(*h*) *Ibid*, s. 39

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**Malicious**  
**Damage to**  
**Property.**

meeting house or other place of divine worship, or in any building belonging to the King or to any county, riding, division, city, borough, poor law union, parish, or place or any university or college or hall of any university, or to any inn of court, or in any street, square, churchyard, burial ground, public garden, or ground; (3) any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument

The punishment for such an offence is imprisonment, with or without hard labour, for not more than six calendar months, and if the offender is a male under sixteen years, with or without a whipping (e).

**SUB-SECT 14—Injuries to Cattle etc**

**Killing etc**  
**cattle.**

**1536** Every person is by statute (k) guilty of felony who unlawfully and maliciously kills, maims, or wounds any cattle (l)

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years, with or without hard labour (m)

(e) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 39 The offence is triable at quarter sessions Nothing in this section affects the right of any person to recover by action damages for the injury so committed (*ibid*). Any person who injures or disfigures the obelisk known as Cleopatra's Needle, or any monument erected or to be erected on any of the Thames Embankments or other lands vested at the date of the Monuments (Metropolis) Act, 1878 (41 & 42 Vict. c 29), in the Metropolitan Board of Works, or who posts any bill or placard, or who writes, cuts, prints, draws, or marks in any manner any word or character or any representation of any object on the obelisk or such monument, is liable to a penalty not exceeding £5, recoverable on summary conviction (Monuments (Metropolis) Act, 1878 (41 & 42 Vict c 29), s 4)

(k) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 40

(l) The word "cattle" is not defined in the Malicious Damage Act, 1861 (24 & 25 Vict c 97) Under a repealed statute (9 Geo 1, c 22) it was held to include horses mares, and colts (*R v Paty* (1770), 2 East, P C 1074), geldings (*R v Mott* (1783), 2 East, P C 1075), pigs (*R v Chapple* (1804), Russ & Ry 77), and asses (*R v Whitney* (1824), 1 Mood O C 3) For the purposes of the Dogs Act, 1906 (6 Edw 7, c 32), the word "cattle" is defined as including horses, mules, asses, sheep, goats, and swine (*ibid*, s 7) The indictment should state the species of cattle injured, "certain cattle" is not sufficient (*R v Chalkeley* (1813), Russ. & Ry 258) See also title ANIMALS, Vol I, p 369

(m) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s 40, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s 1. In *R. v. Woodward* (1796), 2 East, P C 653, on an indictment for killing two sheep, it was held that the property in them might be laid in the agister, but *quære* whether in an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), it is necessary to allege to whom the property in part belongs (see *R. v. Newbould* (1872), 12 Cox, O C. 148, O C. R.), a charge of administering poison to a number of horses is established if the evidence shows that some of the poison was given to each of the horses (*R v Mogg* (1830), 4 O & P 364). A person who unlawfully and maliciously sets fire to a cow-house while a cow is in it, whereby the cow is burned to death, is guilty of "killing" the cow (*R v Haughton* (1838), 5 O. & P. 559), "maiming" implies permanent injury (*R v Jeans* (1844), 1 Car. & Kir. 539, *R v Owens* (1828), 1 Mood. O. C. 205, where the offence was blinding a mare by pouring acid into its eye), but "wounding" may be of a temporary character (*R v Haywood* (1801), Russ & Ry. 16), setting on a dog to bite sheep is not "wounding" sheep (*R v Hughes* (1826), 2 O. & P 420) Wounding may be inflicted by the hand as well as by an instrument (*R v Bullock* (1868), 11 Cox, O. C 125, O. C. R.). It is apprehended that killing and maiming may likewise be done without an instrument Any person who unlawfully and maliciously kills, maims or wounds any dog, bird, beast, or other



SUB-SMOT 16.—*Injuries to Shipping*SECT. 4.  
Malicious  
Damage to  
Property.

**1637.** Everyone by statute (n) commits a felony who unlawfully and maliciously casts away or in anywise destroys any ship or vessel, whether complete or in an unfinished state (o)

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (p)

A person is by statute (q) guilty of a felony who unlawfully and maliciously by any overt act attempts to cast away or destroy any ship or vessel under such circumstances that if the offence were committed the offender would be guilty of felony

Casting away  
ships.Attempting  
to cast away  
ship.

The punishment for such an offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (r)

animal not being cattle, but being either the subject of larceny at common law, or ordinarily kept in confinement, or for any domestic purpose, is liable to be tried summarily and fined or imprisoned, and on a second conviction to be imprisoned (*ibid*, s 41) A person does not commit this offence who acts in the bona fide belief that what he does is necessary to protect himself from injury (*Hanway v Boultlee* (1830), 4 C & P 350), his premises from trespass (*Daniel v Jones* (1877), 2 O P 1) 351), or his master's property from injury (*Miles v Hutchings*, [1903] 2 K B 714) To constitute the offence it does not seem that the act charged must have been committed for the purpose of indulging a cruel disposition (see *Miles v Hutchings*, *supra*) A person may not kill a dog where less violent measures can be used for the attainment of a lawful object In *Daniel v Jones*, *supra*, a person who laid poisoned meat in an enclosed garden for the purpose of destroying and who thereby destroyed a dog which trespassed therein, was held not to have committed an offence under the section Such an act is, it would seem, however, an offence within the Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict c 115), s 2 In *Smith v Williams* (1892), 56 J P 840, it was held (on the authority of *Daniel v Jones*, *supra*) that a person is entitled to shoot domestic fowls trespassing upon his sown land, *sed qd* *see Miles v Hutchings*, *supra* Any person who wilfully and unlawfully administers to or causes to be administered to or taken by any horse, cattle, or domestic animal any poisonous or injurious drug or substance is liable (unless some reasonable cause or excuse is shown on his behalf), on summary conviction, to a fine or imprisonment (Drugging of Animals Act, 1876 (39 Vict c 13), s 1), this Act does not apply to the owner, or person acting under authority of the owner of the horse, cattle, or other animal to which any drug or substance is administered (*ibid*, s 2), nor does the Act exempt a person from liability to any greater or other punishment under any other Act or law, so that he be not punished more than once for the same offence (*ibid*, s 3) See also title ANIMALS, Vol I, p 413

(n) Malicious Damage Act, 1861 (24 & 25 Vict. c 97), s. 42 As to setting fire to ships, see p 772, *ante*

(o) A ship is not cast away or destroyed which is only run aground or stranded on a rock and afterwards got off in such condition as to be easily refitted (*R. v. De Londo* (1765), 2 East, P. O. 1098). A small pleasure boat (eighteen feet long) is, it seems, a "ship or vessel" within this section (*R. v. Bowyer* (1831), 4 O & P 559)

(p) *Ibid*, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 This offence is not triable at quarter sessions. The same penalty is provided (s 43) where the destruction is with intent to prejudice the owner or underwriter (see p. 772, *ante*).

(q) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 44, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1 The offence is triable at quarter sessions.

(r) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 46

## SECT 5

**Malicious  
Damage to  
Property.**

Damaging  
ship with  
intent to  
destroy etc

**1538** Everyone by statute (s) commits a felony who unlawfully and maliciously damages otherwise than by fire, gunpowder, or other explosive substance any ship or vessel, whether complete or in an unfinished state, with intent to destroy or render useless the same

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (t)

Altering  
signals with  
intent to  
endanger  
ship

Everyone by statute (a) commits a felony who unlawfully masks, alters, or removes any light or signal or unlawfully exhibits any false light or signal with intent to bring any ship, vessel, or boat into danger, or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship, vessel, or boat for which no punishment is otherwise provided in the Malicious Damage Act, 1861 (b)

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (c).

Cutting away  
buoys etc

**1539** Everyone by statute (d) commits a felony who unlawfully and maliciously cuts away, casts adrift, removes, alters, defaces, sinks, or destroys or does any act with intent to cut away etc or in any other manner injures or conceals any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen or the purpose of navigation

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (e)

Destroying  
ship in  
distress.

**1540** Everyone by statute (f) commits a felony who unlawfully and maliciously destroys any part of any ship or vessel in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years, with or without hard labour (g)

(s) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 48

(t) *Ibid.*, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s. 1 This offence is triable at quarter sessions

(a) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 47

(b) 24 & 25 Vict c 97

(c) *Ibid.*, s 47, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is not triable at quarter sessions

(d) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 48

(e) *Ibid.*; Penal Servitude Act, 1898 (54 & 55 Vict c 69), s 1 The offence is triable at quarter sessions

(f) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 49

(g) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is triable at quarter sessions Wilful damage to a ship or her stores or cargo by a seaman is also an offence under the Merchant Shipping Act, 1894 (57 & 58 Vict c 60), s 225 (1)

SUB-SECT. 16.—*Threats to Burn etc House.*

SECT. 5

**Malicious  
Damage to  
Property.**Sending  
letter  
threatening  
to burn  
house etc.

**1541.** Any person by statute (h) is guilty of felony who sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw or other agricultural produce, or any grain, hay, or straw or other agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle.

The punishment for this offence is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (i)

SUB SECT 17 — *Miscellaneous*

**1542** Everyone is by statute (k) guilty of a misdemeanour who unlawfully and maliciously commits to or on any real or personal property (l) whatsoever any damage, injury, or spoil to an amount exceeding £5 (m) for which no punishment is specifically provided by the Malicious Damage Act, 1861 (n)

Malicious  
damage to  
amount  
exceeding £5.

The punishment is imprisonment for two years with or without hard labour, or, if the offence be committed between 9 p m and 6 a m, penal servitude for not more than five nor less than three years, or imprisonment for not more than two years with or without hard labour (o)

(h) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 60 The wording of this section makes the case of *R v Hill* (1851), 5 Cox, C C 233, inapplicable now as an authority It is for the jury to say, looking both at the letter itself and the situation of the parties, whether a letter contains a threat (*R v Tyler* (1835), 1 Mood C C 428, *R v Carruthers* (1844), 1 Cox, C C 138) But the judge may hold that there is no evidence of a threat to go to the jury (*R v Carruthers, supra*)

(i) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 60, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 This offence is triable at quarter sessions

(k) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 51

(l) The words real or personal property, mean corporeal, tangible, and visible property, they do not apply to incorporeal rights, such as a right of herbage (*Laws v Eltringham* (1881), 8 Q B D 283), nor do they apply to products growing upon realty but not part of the realty itself, e g mushrooms (*Gardner v Mansbridge* (1887), 19 Q B D 217) but they apply to grass (*Gayford v Chouler*, [1898] 1 Q B 316)

(m) Where several articles are damaged it is not necessary to allege in the indictment the value of each, but only that the amount of damage exceeds £5 (*R v Thoman* (1871), 12 Cox, C C 54, C C R.)

(n) 24 & 25 Vict c 97

(o) *Ibid*, s 51, Penal Servitude Act, 1891 (54 & 55 Vict c 69), s 1 The offence is triable at quarter sessions If the damage does not amount to £5 and is committed either wilfully or maliciously, the offender may be tried summarily and fined or imprisoned, in addition to being required to make compensation as assessed by the justice (not exceeding £5) (*ibid*, s 52) A trespass on short grass in the winter, made in the course of playing a game, has been held not to be wilful (*Elvey v Lytle* (1885), 50 J P 305), but trespass in long grass after warning, and coupled with a refusal to turn back, has been held to be both wilful and malicious (*Gayford v Chouler*, [1898] 1 Q B 316) It is not necessary to constitute an offence under the section that the act should be both wilful and malicious, it is sufficient that it should be either one or the other (see *Gardner v Mansbridge, supra*, per SMITH, J, *Roper v Knott* (1898), 19 Cox, C C 69,

## SECT. 8

**Malicious Damage to Property.**

Making  
gunpowder  
with intent  
to commit  
felony.

**1543** Any person by statute (p) commits a misdemeanour who makes or manufactures, or knowingly has possession of, any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument or thing with intent thereby to commit or enable another person to commit, any of the felonies specified in the Malicious Damage Act, 1861 (q).

The punishment for this offence is imprisonment for not more than two years, with or without hard labour, and if the offender is a male under sixteen, a whipping (r)

SUB SECT 18 — *Proceedings under the Malicious Damage Act, 1861*

## ACCESSORIES

**1544** In the case of every felony punishable under the Malicious Damage Act, 1861 (s), every principal in the second degree, and every accessory before the fact, is punishable in the same manner as the principal in the first degree, and every accessory after the fact is liable to imprisonment not exceeding two years, with or without hard labour (t)

## Aiding and abetting

**1545** Any person who aids, abets, counsels, or procures the commission of any misdemeanour punishable under the Act may be proceeded against, indicted and punished as a principal offender (a)

## Venue in Admiralty cases

**1546** In any indictment for any offence under the Malicious Damage Act, 1861 (b), committed within the jurisdiction of the Admiralty, or for being an accessory to such an offence, the venue in the margin of the indictment must be the same as if the offence had been committed in the place where the accused was apprehended or is in custody, and the offence must be averred to have been committed "on the high seas" (c)

*Hamilton v Bone* (1888), 16 Cox, C C 437. Therefore, in the case of any such offence, if property has been wilfully damaged, though not maliciously, the offence has been committed. Thus a milkman commits an offence under this section who fraudulently damages milk by diluting it with water with the intention of increasing the quantity of milk and putting the surplus money into his own pocket (*Roper v Knott* (1888), 19 Cox, C C 69). The court in this case refused to follow *Hall v Richardson* (1889), 51 J P 345, where it had been held that a milkman who after accidentally spilling some milk had diluted the remainder to make up the full quantity, in his master's supposed interest, was not guilty of wilfully or maliciously damaging the remainder, see also *Hamilton v Bone, supra*, *Denny v. Thwaites* (1876), 2 Ex D 21. A person who wilfully or maliciously commits any damage to any real or personal property, where the damage does not exceed £5, and where no punishment is provided by the Malicious Damage Act, 1861 (21 & 25 Vict c 97), is punishable on summary conviction (*ibid*, ss 52, 53).

(p) Malicious Damage Act, 1861 (24 & 25 Vict c 97), s 54

(q) 24 & 25 Vict. c 97

(r) *Ibid*, s 54. Power is given to a justice upon reasonable cause assigned upon oath to issue a warrant for the search of certain specified places where the same may be suspected to be made, kept, or carried (*ibid*, s. 55). The offence is triable at quarter sessions

(s) 24 & 25 Vict c. 97

(t) *Ibid*, s. 56. As to principals and accessories, see p 247, *ante*

(a) *Ibid*

(b) 24 & 25 Vict c 97

(c) *Ibid*, s. 72. As to the Admiralty jurisdiction, see p 273, *ante*.

**1547** Any person convicted of any indictable misdemeanour, punishable under the Malicious Damage Act, 1861 (*d*), may, in addition to or in lieu of the punishment authorised thereunder, be fined and required to enter into his own recognisances; and to find sureties, both or either, for keeping the peace and being of good behaviour

**SECT. 5.**  
**Malicious**  
**Damage to**  
**Property.**

Power to  
fine etc.

In the case of a felony he may be required to enter into his own recognisance and to find sureties, both or either, for keeping the peace in addition to any punishment authorised thereunder, but no person may be imprisoned under this clause for not finding sureties for more than one year (*e*).

**SECT. 6—Offences relating to Game.**

**1548** Certain statutory offences, punishable on indictment, have been created with regard to taking or killing game, hares, rabbits, and other wild animals, and with regard to trespassing in pursuit of game (*f*)

Poaching etc.

(*d*) 24 & 25 Vict c 97

(*e*) *Ibid*, s 73 As to whipping of offenders, see *ibid*, s 75, and p 411, *ante*. When a person convicted of any offence punishable upon summary conviction by virtue of the Malicious Damage Act, 1861 (24 & 25 Vict c 97) has paid the sum adjudged to be paid together with the costs under such conviction, or has received a remission of such penalty from the Crown or has suffered imprisonment for nonpayment or the imprisonment awarded in the first instance, he is to be released from all further or other proceedings for the same cause (*ibid*, s. 67), see Greaves, *Criminal Law Consolidation Acts*, 2nd ed, 71 As to apprehension without warrant under the Act, see p 303, *ante* As to search warrants in the case of offences under the Act, see p 301, *ante*

(*f*) See Night Poaching Act, 1828 (9 Geo 4, c 64), Night Poaching Act, 1844 (7 & 8 Vict c 29), Larceny Act, 1861 (24 & 25 Vict c 96), ss 12—17 These offences are dealt with under title GAME, see also title ANIMALS, Vol I, p 371

## **CROPS AND GROWING PRODUCE.**

*See* AGRICULTURE , LANDLORD AND TENANT , SALE OF LAND.

## **CROWN LANDS.**

*See* CONSTITUTIONAL LAW.

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# The English Story-Tellers

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## The 'Nineties and the New Century

**O**F the work of the English short-story writers of the generation represented in this volume—the first of the authors was born in 1859, the latest in 1888—it can assuredly be said that it well upholds the standard both in invention in the story that is told and in the artistry that is evidenced in the telling. The generation is one that is of special interest in that it may be said to be that which represents, speaking broadly, work produced during the opening years of the twentieth century. Some of the writers, it is true, had already established their reputations in the “wonderful 'nineties” of last century, when “The Yellow Book” and other publications were giving a fillip to the art of the short story, but some of those whose work is represented in this instalment of the thousand of the best short stories of the world, were still at school when the present century began. Their work in the short story, in its range and in its artistry, will be found as variously attractive and as pleasing as that of their predecessors.

The duality of the work of Jerome Klapka Jerome (b. 1859)—the humorist who could indulge in the farcical narrative of “Three Men in a Boat,” and the sentimentalist who could devise the play of “The Passing of the Third Floor Back”—is well shown in the tender romance of “Portrait of a Lady.” With its touch of whimsical surprise at the revelation of the portrait's original, a revelation which is yet, we feel, perfectly natural, the story is a particularly successful example of the contrast between the musings of the sentimentalist and the reality in which those musings take their rise. “The Fall of Maung San,” one of the “Palace Tales” of Harold Fielding-Hall (1859-1917), is a striking example of the way in which some men who have carried on the work of the Empire in distant parts, have been gifted with the power of depicting for stay-at-homes the psychology of the peoples among whom they have dwelt. We find here that something of the magic

Jerome K.  
Jerome

H. Fielding-  
Hall

of the Arabian Nights seems actually to have been experienced by the writer who had closely studied the people of Burma, and who gave us, in "The Soul of a People" and other books, works of lasting value and of fascinating interest

**A**s an intimate character-study there is something peculiarly impressive about the old shepherd as he is revealed in his wife's simple narrative of "The Death of Snarley Bob" by a writer who won distinction as professor of philosophy as well as writer of remarkable short stories. His volume, "Mad Shepherds," from which this story is taken, is a strikingly original and individual work. In

**L. P. Jacks** this gem of seemingly artless narration, Professor Lawrence Pearsall Jacks (b 1860) fixes the old shepherd in our memory as a fine type of the strong, self-reliant man, whose life and religion have become so inextricably blent that he passes away in something of an ecstasy to go to the help of another Shepherd. We proceed from a philosophical observer's revelation of the unsophisticated to the record of a victim

**Mrs. W. K. Clifford** of sophistication in Mrs W. K. Clifford's strange account of what went on "In the Heart of the Wood." Here a successful novelist, a skilled and critical delineator of modern life, develops in a strikingly unconventional fashion the tragedy that overcomes a couple who have defied the conventions and figured in the divorce court.

Horace Annesley Vachell (b 1861), traveller, novelist, and dramatist, has proved particularly successful in the presentation of character with a touch of oddity, and in "The Chameleon," the

**H. A. Vachell** qualities of which he had given evidence, now in an account of life on the Pacific slope, now in a novel such as "Quinneys," are shown to capital advantage. The central figure of the story is indeed a most engaging scamp, an adventurer with whom it is impossible not to sympathise in the successive stages of his most variegated career, while the happy trick by which he justifies his name is a thoroughly ingenious and ticklesome device. If the story fails in any particular it is only in so far as it leaves the reader wondering whether the man of so many name-colours really did settle down with

**Mary Coleridge** his friend or only break out anew after an interval. Mary Coleridge (1861-1907) affords a striking contrast with "The King is Dead, Long Live the King," a story which possesses the simple directness of a fairy-tale, though marked by touches of a quiet cynicism. It is the death of a king, too, that inspired

**Bart Kennedy** Bart Kennedy (b 1861) to his vivid realisation of "The King's Last Sailing," the passing of the pyre-ship bearing the body of the Viking Smerd, with its touch of romance. A writer who had won popularity by his realistic rendering in words of some of the sordid aspects of modern life proved in this story capable of visualising, and making his readers visualise, a striking episode from a legendary past.

"When the Door Opened—?" by Sarah Grand (b 1861), is a remark-

able example of what may be summed up as the story without an end—the story that is which holds the reader entranced up to a certain point, and there breaks off, leaving him puzzled by a perennial note of interrogation as to what happened next. The story which follows is by a writer who showed himself not only a naturalist with great gifts of literary expression but also a charming master of fanciful romance and a gifted exponent of the art of the short story. "The Story of a Piebald Horse," by Sarah Grand  
W H Hudson (b 1862), is one of the impressions of South American life in which the gifted naturalist has shown himself no less acute an observer of men than of the birds and other creatures of the wild of which he has written so revealingly in various volumes. Though Eden Phillpotts (b 1862) needed for his greatest efforts the full canvas of the novel, on which could be indicated the broad background of Dartmoor, in how excellent a fashion he could make use of the smaller space of the fiction "kit-cat," is capitally exemplified in "The Skipper's Bible," where a tragic tale of the sea is rendered with great vigour. Eden Phillpotts

THE quiet humour of Sir Anthony Hope Hawkins (b 1863), the smiling recognition of human weakness shown in many of his stories of contemporary life, are well illustrated by "The Grey Frock," where the vanity of woman and the egotism of man are played off cleverly against each other with a touch of kindly cynicism, while that neat mastery of the give-and-take of social talk which made "The Dolly Dialogues" one of the successes of its decade in the realms of light literature, is well represented in "A Liberal Education," a happy example of the delightful inconsequence of the lady whose dialogues made her famous. "Anthony Hope"

How thin is the partition that divides humour from tragedy may well be instanced in the work of W W Jacobs (b 1863), one of the chief masters of the humorous short story of his time—the story in which drollery of character, situation, and dialogue are employed in combination to most diverting ends, he yet proved himself, in "The Monkey's Paw," also able to write in the authentic tragic vein within the compass of the short story, to bring the eerie within the sphere of the solidities of Suburbia. In "An Odd Freak" the same writer is on ground that he had earlier made peculiarly his own. Among writers of the short story who won instant popularity in the 'nineties was Arthur Morrison (b 1863), in whose "Tales of Mean Streets" some of the sordid aspects of London life were revealed with great skill. Arthur Morrison  
That the writer could touch another note no less skilfully is well shown by "Charlwood with a Number," the story by which he is here represented. It is a pleasant study of a zealous amateur astronomer who seeks to make his daily life run equably as the course of the stars which he observes by way of constant hobby.

As writer of exciting novels of adventure with qualities that gripped and held the willing reader, Max Pemberton (b 1863) has enjoyed

considerable popularity, and his gifts as narrator have been well shown in the art of the short story also. "Joie-de-Loup" is an admirably rendered tale of the lost child, from an unaccustomed angle—that of the child itself—dimly remembering, and but half-consciously fumbling after, something of an unrecapturable past. Then, derelict in Paris, a chord of subconscious memory is struck, and the boy makes, he knows not why, for the church where his mother had worshipped—where she is at the moment worshipping.

**POET**, critic, and novelist, it was as revealer of the life of the Cornish coast places both of his own time and of the past, that "Q" (Sir Arthur Quiller-Couch, *b* 1863) early won admiration. His consummate skill in the artistry of the short story is well illustrated in the three examples here given. "Roll-Call of the Reef" has those qualities which might well convert it into a veritable legend of the coast with which it deals. (It may be compared, for contrast, with Major W. P. Drury's "The Passing of the Flagship," one of the later stories of this volume.) "Old Æson" is a clever example of the serio-comic, and "The Small People" a poignant presentation of the problem of country hopes choked and faded in the city air.

Israel Zangwill (*b* 1864) is a skilful practitioner of the art of short-story writing, and his volume of tales entitled, "They That Walk in Darkness," is marked not only by powerful realisation in the opening story of all that is meant by the affliction of blindness, but also throughout by fine appreciation of the form and content of the short story. The title-story of that collection by which he is here represented is extremely impressive in the way in which it reveals at once the character of the clever lad suddenly doomed to loss of sight, and that of the loving mother ready to catch at any straw of hope in the vain hope of a cure for him. Something of the same theme is subjected to very different treatment in Edwin Pugh's "The Man Who Was Blind" which appears later in this volume. Another kind of solitariness, that which may fall upon an individual dwelling

in a crowded city, is the theme cleverly presented in "An Idyll of London," by Beatrice Harraden (*b* 1864). In it a lonely old man who earns a precarious living by copying pictures at the National Gallery, finds something of loving sympathy in his last hours from a young girl who is also lonely amid the crowd.

A more cheerful note is that struck by Barry Pain (*b* 1867), whose work has been largely rendered in short stories of a humorous turn. In "The Kindness of the Celestial" he tells of a whimsical schoolboy who sets out to win by ostentatious kindness a master who is ever too ready to reprimand him.

Among the novelists of his time, who were not less successful as short-story writers, Bernard Capes (1864–1918) was notable, especially with his "Historical Vignettes," which rendered the true atmosphere of history in a series of pleasantly invented stories. "The Hero of Waterloo" is a capital instance, it might be a tender reminiscence of the later years of George III..

recovered from some contemporary memoir. Another writer who may be regarded as scarcely less brilliant as a short-story writer than as a novelist, is Robert Hichens (*b* 1864), whose "Desert Air" shows how the very air which a man breathes, the environment in which he finds himself, may transform his nature from that which it has hitherto appeared to be to something entirely the reverse. It is a study in the relation of environment to psychology which is, as it was designed to be, eerily impressive.

Robert  
Hichens

Leonard Merrick's (*b* 1864) stories of Paris life, whether in the form of the full-length novel or within the exacting limits of the short story, are marked by consummate skill in the telling, and have gained for him a high position in the regard of his fellow-craftsmen. In "The Judgment of Paris" he is peculiarly successful in giving at once the romantic atmosphere in which the two Parisian actors are willing to submit to the judgment of their fellow-citizens as to which is the better actor, and in compelling belief in the way in which that judgment is gained. A full story, it reads and remains in the memory, compact, complete, and satisfying as a well-told anecdote.

Leonard  
Merrick

A HIGH place among the writers who have found the main source of their inspiration in the highways and byways of London, is occupied by Pett Ridge (*b* 1864), and more particularly among those who have humorously interpreted that which they have observed. "The Little Brown 'Bus" is but an account of a short 'bus journey in the East End of London, yet is the journey so neatly rendered in words that the reader feels as though he himself had done the trip through dockland in company with the free-and-easy sailor who makes himself the dominating figure of the 'bus-load of passengers. Quite of another kind is the trip that we take with "The Saloon Passenger," in the story by E. W. Hornung (*b* 1866), a novelist of strong and varied gifts. Here the journey is from Britain to the Antipodes, and the passenger is a murderer who on setting out thinks himself free until the end of the voyage at least. Signals from a passing ship leave him in doubt as to what his captain may have learnt, and the man's thoughts and feelings, so markedly different from the easy manners which he has to maintain towards all on board, are effectively and convincingly rendered.

Pett  
Ridge

E. W.  
Hornung

Herbert George Wells (*b* 1866) has displayed versatility alike in the manner and the matter of his fiction. As novelist he turned from excursions into a realm in which science and fancy combined to produce marvels with an astonishing verisimilitude, to almost uncannily realistic renderings of contemporary character and psychology. In the art of the short story he displayed something of the same mastery. The two examples of his art which are included in this collection well represent his gifts as a narrator. In "The Stolen Bacillus" we are made to feel horror at the idea of the Anarchist's theft of a tube of cholera bacilli, and yet to delight in the

H. G. Wells

farcical pursuit, and to laugh at the ridiculous dénouement. In "The Magic Shop" we find ourselves thoroughly under the spell of the gifted story-teller.

**NOVELIST** and dramatist of great distinction, John Galsworthy (*b* 1867) is also an able exponent of the short story. His ability as a delineator of character is strikingly exhibited in "A Portrait," an amazingly successful example of the art of presenting an individual through the medium of words, and one that may incidentally be regarded as a striking reply to much of the sneering criticism directed against the "Victorians." His dramatic episode of "A Woman" is sharply, unforgettably vignetted. As interpreter of the tragedy and comedy discernible to an acute observer among the folks of the Derbyshire Peakland district, R. Murray Gilchrist (1868-1917) wrote capably both in novels and in short stories. His vivid human qualities are well displayed here in "A Strolling Player" and "The Gaffer's Masterpiece," both tense with restrained emotion, in the one instance that of a lonely bereaved couple, and in the other, that of a simple old countryman whose lovingly-produced "masterpiece" is wantonly destroyed.

Algernon Blackwood (*b* 1869) is an approved master of the weird and the wonderful, and especially of such as may be revealed by excursions over the borderland of ordinary psychology. Mr. Wells won much of his earlier fame by the rendering of marvels of scientific materialisation, but Mr. Blackwood has sought to penetrate and display mental mysteries. The skill with which he can do so is well illustrated in the strange story of "Accessory Before the Fact," with its uncomfortable trespassing of one man upon another's personality. Hubert Crackanthorpe (1870-96), within his short life, won prompt recognition as one of the notable writers of the closing decade of the nineteenth century. In a volume of "Vignettes" he gave evidence of excellent craftsmanship in the art of the short story, and in "Saint-Pé," by which he is here represented, we have a characteristic piece of his careful work in the presentation of a shameless old French beggar. Striking is the contrast between the careful etching shown in "Saint-Pé" and the broad effect produced in "A Midnight Bridal" by Halliwell Sutcliffe.

(*b* 1870) The romantic novelist of the Yorkshire moors is also narrator of gripping short stories, and this tale of a strangely-arranged wedding to avert a family curse is an engaging example of his art, vivid in its portrayal of the proud Scots family forced by fate to an unbecomingly unconventional proceeding, and arresting in its sharp succession of remarkable, but seemingly inevitable happenings. From

romance of the eighteenth century, "Escape," by Dorothea Conyers (*b* 1871), brings us to the present day, and the problem that faces every perpetrator of a crime against the laws of the land in which he lives—that of evading the con-

sequences of his crime Crime and its detection have been much utilised by short-story writers, though only occasionally have they been used greatly In this clever story the author is concerned with the criminal's almost frantic mental agitation over his escape Elaborately he "covers up his tracks" and has practically escaped when, believing himself discovered, he commits suicide, and only thus betrays himself An entertaining story is told by A J Dawson (b 1872) in "Bill's Shore Job" wherein we find that the genteel A B, though he has awakened the interest of the daughter of his ship's owner, finds the call of the sea stronger than that of possible romance A J  
Dawson

**A**LLEGORY, which is a somewhat uncommon note with later short-story writers, is employed by J D Beresford (b 1873) in his account of "The Little Town" wherein he tells how he found a strange place of entertainment named Kosmos, where the master of the puppets moved them about in a way that seemed to the spectators to be without beginning or end or purpose Though his best work has been done in the full-sized novel Mr Beresford in such stories as this shows himself well capable of effecting his purpose within the more constricted limits of the short story Writer of interesting novels in which London life and character have played an important part, Edwin Pugh (b 1874) is a skilled master of narrative art, and his success in the short-story form is well indicated in the carefully rendered account of "The Man Who Was Blind" Mr Zangwill, in the story of his which has already been commented on, has told the story of the blind Jewish lad who hails "the healer" as he falls dead In Mr Pugh's story we have a similar theme with something like a reversal of the dénouement Both writers have been able to imagine themselves into the conditions of their subjects, the one with something of the sombre intensity of hopelessness, the other with the sympathy which demands "a happy ending" J D  
Beresford  
  
Edwin  
Pugh

Although it is as poet that John Masefield (b 1875) has won his widest fame, he had before doing so gained cordial appreciation as a writer of short stories of the sea as well as of sea ballads, and with "A Tarpaulin Muster" and other volumes had won a position among leading describers of the romance and reality of life on the ocean wave In "The Yarn of Happy Jack," taken from the volume named, he gives through the lips of a Norwegian sailor a story that combines fairyland and a simple moral in a fashion that is reminiscent of that great master of story-telling, the Danish Hans Andersen Son of M E Braddon, one of the most popular novelists of her time, W B Maxwell (b 1876) has himself taken a high place among writers of fiction of the succeeding generation by his careful considerative novels of modern life As a short-story writer he is here well represented by "Three—Four—Five!" a delightful account of the origin of a Suburban John  
Masefield  
  
W B  
Maxwell

family feud in the great "Sale" of a big drapery establishment. It is a heartily entertaining essay in social satire.

In "The Rocker" Oliver Onions gives a wonderful impression of the group about an old farm kitchen—the children playing about the aged aunt knitting by the fireside, and the gipsy chair-mender and her babe. The old aunt is the central figure, and it is her romance that is delicately, allusively suggested, thanks to the vision of the gipsy. It is a rarely dainty and touching piece of the romance of life unfulfilled, and well represents the work of a writer whose novels and stories are all marked by a distinctive literary quality. Although he has also written notable

**Oliver  
Onions**

novels, it is more especially as a short-story writer that Perceval Gibbon (b. 1879) has won distinction, and from the publication of "Vrouw Grobelaar's Leading

Cases" has continuously exercised the art of the short story with happy results. His "The King of the Baboons" is a very interesting tale of up-country Boer life, though the struggle between the settlers and the creatures of the wild has an uncannily suggestive hint of the missing link of which much was heard in the days when the Darwinian theory was matter of everyday discussion. The "spectre ship" seems to belong to the old days of "the wooden walls," galleons, and sea rovers, but in "The Passing of the Flagship" Major W. P. Drury gives us a new rendering of the idea in these modern times of iron ships and electric light, and as has been suggested it will be found interesting to compare his account of the vision that appeared before Private Pagett of the Marines with "Q's" "Roll-Call of the Reef" earlier in the volume.

**Perceval  
Gibbon**

Among latter-day writers who, in the short story, have ingeniously exploited crime, both in the dramatic and humorous veins, Sax Rohmer has proved one of the most successful, and a representative example of his humorous work is the story of "Narky" here given. The ingenuous way in which the would-be burglar of a pawnbroker's premises seeks to fascinate the pawnbroker's daughter, and the ingenuous way in which she manages so that he shall be hoist with his own petard, combine to make a thoroughly diverting story of Cockney low life.

W. J.



## PORTRAIT OF A LADY

**M**Y work pressed upon me, but the louder it challenged me—such is the heart of the timid fighter—the less stomach I felt for the contest I wrestled with it in my study, only to be driven to my books I walked out to meet it in the streets, only to seek shelter from it in music-hall or theatre Thereupon it waxed importunate and overbearing, till the shadow of it darkened all my doings The thought of it sat beside me at the table, and spoilt my appetite The memory of it followed me abroad, and stood between me and my friends, so that all talk died upon my lips, and I moved among men as one ghost-ridden

Then the throbbing town, with its thousand distracting voices, grew maddening to me I felt the need of converse with solitude, that master and teacher of all the arts, and I bethought me of the Yorkshire Wolds, where a man may walk all day, meeting no human creature, hearing no voice but the curlew's cry, where, lying prone upon the sweet grass, he may feel the pulsation of the earth, travelling its eleven hundred miles a minute through the æther So one morning I bundled many things, some needful, more needless, into a bag, hurrying lest somebody or something should happen to stay me, and that night I lay in a small northern town, that stands upon the borders of smokedom at the gate of the great moors, and at seven the next morning I took my seat beside a one-eyed carrier, behind an ancient piebald mare The one-eyed carrier cracked his whip, the piebald horse jogged forward, the nineteenth century, with its turmoil, fell away behind us, the distant hills, creeping nearer, swallowed us up, and we became but a moving speck upon the face of the quiet earth

Late in the afternoon we arrived at a village, the memory of which had been growing in my mind It lies in the triangle formed by the sloping walls of three great fells, and not even the telegraph wire has reached it yet, to murmur to it whispers of the restless world—or had not at the time of which I write Nought disturbs it save, once a day, the one-eyed carrier—if he and his piebald mare have not yet laid their ancient bones to rest—who, passing through, leaves a few letters and parcels to be called for by the people of the scattered hill-farms round about It is the meeting-place of two noisy brooks Through the sleepy

days and the hushed nights, one hears them ever chattering to themselves as children playing alone some game of make-believe. Coming from their far-off homes among the hills, they mingle their waters here, and journey on in company, and then their converse is more serious, as becomes those who have joined hands and are moving onward towards life together. Later they reach sad, weary towns, black beneath a never-lifted pall of smoke, where day and night the clang of iron drowns all human voices, where the children play with ashes, where the men and women have dull, patient faces, and so on, muddy and stained, to the deep sea that ceaselessly calls to them. Here, however, their waters are fresh and clear, and their passing makes the only stir that the valley has ever known. Surely, of all peaceful places, this was the one where a tired worker might find strength.

My one-eyed friend had suggested I should seek lodgings at the house of one Mistress Cholmondley, a widow lady, who resided with her only daughter in the whitewashed cottage that is the last house in the village, if you take the road that leads over Coll Fell.

"Tha' can see th' house from here, by reason o' its standing so high above t'others," said the carrier, pointing with his whip. "It's theer or nowhere, aw'm thinking, for folks don't often coom seeking lodgings in these parts."

The tiny dwelling, half smothered in June roses, looked idyllic, and, after a lunch of bread and cheese at the little inn, I made my way to it by the path that passes through the churchyard. I had conjured up the vision of a stout, pleasant, comfort-radiating woman, assisted by some bright, fresh girl, whose rosy cheeks and sunburnt hands would help me banish from my mind all clogging recollections of the town, and hopeful, I pushed back the half-opened door and entered.

The cottage was furnished with a taste that surprised me, but in themselves my hosts disappointed me. My bustling, comely housewife turned out a wizened, bleary-eyed dame. All day long she dozed in her big chair, or crouched with shrivelled hands spread out before the fire. My dream of winsome maidenhood vanished before the reality of a weary-looking, sharp-featured woman of between forty and fifty. Perhaps there had been a time when the listless eyes had sparkled with roguish merriment, when the shrivelled, tight-drawn lips had pouted temptingly, but spinsterhood does not sweeten the juices of a woman, and strong country air, though, like old ale, it is good when taken occasionally, dulls the brain if lived upon. A narrow, uninteresting woman I found her, troubled with a shyness that sat ludicrously upon

her age, and that yet failed to save her from the landlady's customary failing of loquacity concerning "better days," together with an irritating, if harmless, affectation of youthfulness

All other details were, however, most satisfactory, and at the window commanding the road that leads through the valley towards the distant world, I settled down to face my work

But the spirit of industry, once driven forth, returns with coy steps I wrote for perhaps an hour, and then throwing down my halting pen, I looked about the room, seeking distraction. A Chippendale bookcase stood against the wall and I strolled over to it. The key was in the lock, and opening its glass doors, I examined the well-filled shelves. They held a curious collection—miscellanies with quaint, glazed bindings, novels, and poems, whose authors I had never heard of, old magazines long dead, their very names forgotten, "keepsakes" and annuals, redolent of an age of vastly pretty sentiments and lavender-coloured silks. On the top shelf, however, was a volume of Keats, wedged between a number of the *Evangelical Rambler* and Young's *Night Thoughts*, and standing on tip-toe, I sought to draw it from its place. The book was jammed so tightly that my efforts brought two or three other tumbling about me, covering me with a cloud of fine dust, and to my feet there fell, with a rattle of glass and metal, a small miniature painting, framed in black wood.

I picked it up, and, taking it to the window, examined it. It was the picture of a young girl, dressed in the fashion of thirty years ago—I mean thirty years ago then. I fear it must be nearer fifty, speaking as from now—when our grandmothers wore corkscrew curls, and low-cut bodices that one wonders how they kept from slipping down. The face was beautiful, not merely with the conventional beauty of tiresome regularity and impossible colouring such as one finds in all miniatures, but with soul behind the soft deep eyes. As I gazed, the sweet lips seemed to laugh at me, and yet there lurked a sadness in the smile, as though the artist, in some rare moment, had seen the coming shadow of life across the sunshine of the face. Even my small knowledge of Art told me that the work was clever, and I wondered why it should have lain so long neglected, when as a mere ornament it was valuable. It must have been placed in the bookcase years ago by some one, and forgotten.

I replaced it among its dusty companions, and sat down once more to my work. But between me and the fading light came the face of the miniature, and would not be banished. Wherever I turned it looked

out at me from the shadows I am not naturally fanciful, and the work I was engaged upon, the writing of a farcical comedy, was not of the kind to excite the dreamy side of a man's nature I grew angry with myself, and made a further effort to fix my mind upon the paper in front of me But my thoughts refused to return from their wanderings. Once, glancing back over my shoulder, I could have sworn I saw the original of the picture sitting in the big chintz-covered chair in the far corner It was dressed in a faded lilac frock, trimmed with some old lace, and I could not help noticing the beauty of the folded hands, though in the portrait only the head and shoulders had been drawn

Next morning I had forgotten the incident, but with the lighting of the lamp the memory of it awoke within me, and my interest grew so strong that again I took the miniature from its hiding-place and looked at it

And then the knowledge suddenly came to me that I knew the face Where had I seen her, and when? I had met her and spoken to her The picture smiled at me, as if rallying me on my forgetfulness I put it back upon its shelf, and sat racking my brains, trying to recollect, we had met somewhere—in the country—a long time ago, and had talked of commonplace things To the vision of her clung the scent of roses and the murmuring voices of haymakers Why had I never seen her again? Why had she passed so completely out of my mind?

My landlady entered to lay my supper, and I questioned her, assuming a careless tone Reason with or laugh at myself as I would, this shadowy memory was becoming a romance to me It was as though I were talking of some loved, dead friend, even to speak of whom to commonplace people was a sacrilege I did not want the woman to question me in return

"Oh, yes," answered my landlady Ladies had often lodged with her Sometimes people stayed the whole summer, wandering about the woods and fells, but to her thinking the great hills were lonesome. Some of her lodgers had been young ladies, but she could not remember any of them having impressed her with their beauty But then it was said women were never a judge of other women They had come and gone Few had ever returned, and fresh faces drove out the old "You have been letting lodgings for a long time?" I asked "I suppose it could be fifteen—twenty years ago that strangers to you lived in this room?"

"Longer than that," she said quietly, dropping for the moment all affectation. "We came here from the farm when my father died.

He had had losses, and there was but little left    That is twenty-seven years ago now "

I hastened to close the conversation, fearing long-winded recollections of " better days " I have heard such so often from one landlady and another I had not learnt much Who was the original of the miniature, how it came to be lying forgotten in the dusty bookcase were still mysteries , and with a strange perversity I could not have explained to myself, I shrank from putting a direct question

So two days more passed by My work took gradually a firmer grip upon my mind, and the face of the miniature visited me less often But in the evening of the third day, which was a Sunday, a curious thing happened

I was returning from a stroll, and dusk was falling as I reached the cottage I had been thinking of my farce, and I was laughing to myself at a situation that seemed to me comical, when, passing the window of my room, I saw looking out the sweet, fair face that had become so familiar to me It stood close to the latticed panes, a slim, girlish figure, clad in the old-fashioned lilac-coloured frock in which I had imagined it on the first night of my arrival, the beautiful hands clasped across the breast, as then they had been folded on the lap Her eyes were gazing down the road that passes through the village and goes south , but they seemed to be dreaming, not seeing, and the sadness in them struck upon one almost as a cry I was close to the window, but the hedge screened me, and I remained watching, until, after a minute I suppose, though it appeared longer, the figure drew back into the darkness of the room and disappeared

I entered, but the room was empty I called, but no one answered The uncomfortable suggestion took hold of me that I must be growing a little crazy All that had gone before I could explain to myself as a mere train of thought, but this time it had come to me suddenly—uninvited, while my thoughts had been busy elsewhere This thing had appeared not to my brain but to my senses I am not a believer in ghosts, but I am in the hallucinations of a weak mind, and my own explanation was in consequence not very satisfactory to myself

I tried to dismiss the incident, but it would not leave me , and later that same evening, something else occurred that fixed it still clearer in my thoughts I had taken out two or three books at random with which to amuse myself, and turning over the leaves of one of them, a volume of verses, by some obscure poet, I found its sentimental

passages much scored and commented upon in pencil, as was common fifty years ago—as may be common now, for your Fleet Street cynic has not altered the world and its ways to quite the extent that he imagines

One poem in particular had evidently appealed greatly to the reader's sympathies. It was the old, old story of the gallant who woos and rides away, leaving the maiden to weep. The poetry was poor, and at another time its conventionality would have excited only my ridicule. But, reading it in conjunction with the quaint, naïve notes scattered about its margins, I felt no inclination to jeer. These hackneyed stories that we laugh at are deep profundities to the many who find in them some shadow of their own sorrows, and she—for it was a woman's handwriting—to whom this book belonged had loved its trite verses, because in them she had read her own heart. This, I told myself, was her story also, a common enough story in life as in literature, but novel to those who live it.

There was no reason for my connecting her with the original of the miniature, except perhaps a subtle relationship between the thin nervous handwriting and the mobile features, yet I felt instinctively they were one and the same, and that I was tracing, link by link, the history of my forgotten friend.

I felt urged to probe further, and next morning, while my landlady was clearing away my breakfast things, I fenced round the subject once again. "By the way," I said, "while I think of it, if I leave any books or papers here behind me, send them on at once. I have a knack of doing that sort of thing. I suppose," I added, "your lodgers often do leave some of their belongings behind them."

It sounded to myself a clumsy ruse. I wondered if she would suspect what was behind it.

"Not often," she answered, "never, that I can remember, except in the case of one poor lady, who died here."

I glanced up quickly. "In this room?" I asked.

My landlady seemed troubled at my tone. "Well, not exactly in this very room. We carried her upstairs, but she died immediately. She was dying when she came here. I should not have taken her in had I known. So many people are prejudiced against a house where death has occurred, as if there were any where it had not. It was not quite fair to us."

I did not speak for a while, and the rattle of the plates and knives continued undisturbed.

"What did she leave here?" I asked at length

"Oh, just a few books and photographs, and such-like small things that people bring with them to lodgings," was the reply "Her people promised to send for them, but they never did, and I suppose I forgot them They were not of any value"

The woman turned as she was leaving the room "It won't drive you away, sir, I hope, what I have told you," she said "It all happened a long while ago"

"Of course not," I answered "It interested me, that was all" And the woman went out, closing the door behind her

So here was the explanation, if I chose to accept it I sat long that morning, wondering to myself whether things I had learnt to laugh at could be after all realities And a day or two afterwards I made a discovery that confirmed all my vague surmises

Rummaging through this same dusty bookcase, I found in one of the ill-fitting drawers, beneath a heap of torn and tumbled books, a diary, belonging to the 'fifties, stuffed with many letters and shapeless flowers, pressed between stained pages, and there—for the writer of stories, tempted by human documents, is weak—in faded ink, brown and withered like the flowers, I read the story I already knew

Such a very old story it was, and so conventional He was an artist—was ever story of this type written where the hero was not an artist? They had been children together, loving each other without knowing it, till one day it was revealed to them Here is the entry

"May 18th I do not know what to say, or how to begin Chris loves me I have been praying to God to make me worthy of him, and dancing round the room in my bare feet for fear of waking them below He kissed my hands and clasped them round his neck, saying they were beautiful as the hands of a goddess, and he knelt and kissed them again, I am holding them before me and kissing them myself I am glad they are so beautiful O God, why are you so good to me? Help me to be a true wife to him Help me that I may never give him an instant's pain! Oh, that I had more power of loving, that I might love him better,"—and thus foolish thoughts for many pages, but foolish thoughts of the kind that has kept this worn old world, hanging for so many ages in space, from turning sour

Later, in February, there is another entry that carries on the story

"Chris left this morning He put a little packet into my hands at the last moment, saying it was the most precious thing he possessed,

and that when I looked at it I ~~was~~ to think of him who loved it Of course I guessed what it was, but I ~~did not~~ open it till I was alone in my room It is the picture of myself that he has been so secret about, but oh, so beautiful I wonder if I am really as beautiful as this But I wish he had not made me look so sad I am kissing the little lips I love them, because he loved to kiss them O sweetheart! it will be long before you kiss them again Of course, it was right for ~~him~~ to go, and I am glad he has been able to manage it He could not study properly in this quiet country place, and now he will be able to go to Paris and Rome and he will be great Even the stupid people here see how clever he is But, oh, it will be so long before I see him again, my love! my king!"

With each letter that comes from him, similar foolish rhapsodies are written down, but these letters of his, I gather, as I turn the pages, grow after a while colder and fewer, and a chill fear that dare not be penned creeps in among the words

"March 12th Six weeks and no letter from Chris, and oh dear! I am so hungry for one, for the last I have almost kissed to pieces I suppose he will write more often when he gets to London He is working hard, I know, and it is selfish of me to expect him to write more often, but I would sit up all night for a week rather than miss writing to him I suppose men are not like that O God, help me—help me, whatever happens! How foolish I am to-night! He was always careless I will punish him for it when he comes back, but not very much" Truly enough a conventional story

Letters do come from him after that, but apparently they are less and less satisfactory, for the diary grows angry and bitter, and the faded writing is blotted at times with tears Then towards the end of another year there comes this entry, written in a hand of strange neatness and precision

"It is all over now I am glad it is finished I have written to him, giving him up I have told him I have ceased to care for him, and that it is better we should both be free It is best that way He would have had to ask me to release him, and that would have given him pain He was always gentle Now he will be able to marry her with an easy conscience, and he need never know what I have suffered She is more fitted for him than I am I hope he will be happy I think I have done the right thing"

A few lines follow, left blank, and then the writing is resumed, but in a stronger, more vehement hand. "Why do I lie to myself? I





Roll

*John Jerome*



hate her! I would kill her if I could I hope she will make him wretched, and that he will come to hate her as I do, and that she will die! Why did I let them persuade me to send that lying letter? He will show it to her, and she will see through it and laugh at me I could have held him to his promise, he could not have got out of it

"What do I care about dignity, and womanliness, and right, and all the rest of the canting words! I want him I want his kisses, and his arms about me He is mine! He loved me once! I have only given him up because I thought it a fine thing to play the saint It is only an acted lie I would rather be evil, and he loved me Why do I deceive myself? I want him I care for nothing else at the bottom of my heart—his love, his kisses!" And towards the end "My God, what am I saying? Have I no shame, no strength? O God, help me!"

And there the diary closes

I looked among the letters, lying between the pages of the book Most of them were signed simply "Chris" or "Christopher" But one gave his name in full, and it was a name I know well as that of a famous man, whose hand I have often shaken I thought of his hard-featured, handsome wife, and of his great chill place, half house, half exhibition, in Kensington, filled constantly with its smart, chattering set, among whom he seemed always to be the uninvited guest, of his weary face and bitter tongue And thinking thus, there rose up before me the sweet, sad face of the woman of the miniature, and, meeting her eyes, as she smiled at me from out of the shadows, I looked at her my wonder

I took the miniature from its shelf There would be no harm now in learning her name So I stood with it in my hand till a little later my landlady entered to lay the cloth

"I tumbled this out of your bookcase," I said, "in reaching down some books It is some one I know—some one I have met, but I cannot think where Do you know who it is?"

The woman took it from my hand, and a faint flush crossed her withered face "I had lost it," she answered "I never thought of looking there It's a portrait of myself, painted years ago, by a friend"

I looked from her to the miniature, as she stood among the shadows, with the lamplight falling on her face, and saw her perhaps for the first time

"How stupid of me," I answered. "Ycs, I see the likeness now."

HAROLD FIELDING-HALL  
1859-1917

## THE FALL OF MAUNG SAN

"THE chief Minister wants to see your Majesty," said Maung San  
"Very well," said the King, "tell him to come to the audience at twelve o'clock"

"But he says it is an urgent and a private matter, your Majesty"

"Humph!" said the King He was engaged eating mangoes with his chief Queen He had only got as far as number fifteen, and he did not like being disturbed "Can't he wait?"

"He says the matter cannot possibly wait"

The King rose with a resigned air

"There is no peace in this Palace Always there is business One cannot even eat half a mango without being disturbed Bring him to the fountain room"

Maung San went out, and the King washed his hands and lips carefully out of a golden ewer held by a maid of honour

"What do you suppose he wants to see you for in such a hurry?" asked the chief Queen

"Can't say," answered the King, drying his fingers on a silk napkin  
"But very likely there is no money in the treasury Diamonds are so expensive" Here he glanced at a diamond wreath the Queen wore in her hair "I daresay the cook can't get any money to buy us dinner"

The Queen laughed, and the King went out

He found the Minister in the fountain room alone Maung San stood by the door, discreetly out of earshot

"Now," said the King, when the Minister had finished his obeisances, "what is this all about?"

"It is a serious matter, your Majesty," said the Minister.

"A rebellion?" asked the King

The Minister raised his hands in deprecation "A rebellion, when all the people love your Majesty above even their own fathers? Such a thing is incredible"

"Then a disaster on the frontier?"

"Your Majesty has such able officers that a disaster is impossible. The army is even now annexing vast regions to the Empire."

"Then what is it?" said the King.

"It is about your Majesty's younger brother," answered the Minister.

The King was relieved. "Ah, indeed," he said, sitting back more comfortably. "About a Prince. Which Prince?"

"The Kawlin Prince, your Majesty."

"To be sure, the Kawlin Prince. And a girl, I suppose. Who is it now? Last time it was a secretary's daughter. Probably this time it is a Minister's wife."

The chief Minister shook his head. "Much worse than that, your Majesty."

"Not one of the Queens!" ejaculated the King, agitated.

"Worse even than that, your Majesty," and the old man wagged his head sorrowfully.

"Worse than that?" shouted the King. "Great pagodas, what do you mean? Is he going to clope with his aunt, or with the centre tower of the Palace, or with the Incomparable Pagoda? Who is it?"

"She is a gravedigger's daughter," replied the Minister.

The King leant back aghast. "Just say that again, will you?" he stammered.

"She is a gravedigger's daughter, your Majesty. She lives with her father, near Mandalay Hill, where the cemetery is. She is very beautiful, more beautiful, they say, than any lady in the Palace. All the city has heard of her. For weeks past our young men have gone to watch and see her draw water from the well in the evening. The city raves about her."

The King meditated for a moment. "Clearly this is an impossible thing," he said, "a gravedigger's daughter! None of my race could so demean himself. To make our family akin to a gravedigger's family, one of hereditary slaves! No, it is quite incredible. You have been deceived."

But the Minister was not to be so browbeaten. "Alas, it is too true, your Majesty. Your brother, the Prince, has been watched. Thrice has he gone to the well on following evenings. He shows himself quite openly there. I have heard that he intends to carry her off."

"When?" asked the King.

" Soon, your Majesty "

" He must be prevented I will arrest him," said the King Then he leant back and tapped the arm of his golden chair " But no, after all, it is impossible Have you seen the girl ? "

" No, your Majesty "

" But they say she is very beautiful "

" So they say," answered the Minister

" What do they say she is like ? "

" She is tall, your Majesty "

The King nodded

" And slender "

" They should be slender," added the King

" And has long hair "

" Curly ? " asked the King with a frown

" No, your Majesty, they say it is straight, and falls far below her knees As dark as night they call it Her eyes are large and dark too, and her brows are low and straight "

" That sounds well," said the King " What colour is she ? "

" She is dark, your Majesty Her skin is dark and soft and very lustrous, shining like satin The young men like that They say that girls with dark skins——"

" It is quite true," murmured the King absently

" But she is a gravedigger's daughter," said his Minister sharply

" Ah, ah," said the King, rousing up " Oh, of course, yes, a gravedigger's daughter Totally impossible I shudder to think of it "

The Minister said he shuddered too

Maung San wondered why the room shook so much

" Is it public yet ? " asked the King

" No, your Majesty But one or two have recognised him at the well They will not tell "

" Let us be careful," said the King, " and not do anything hurriedly " He meditated again for a time " You don't suppose the Prince will do anything to-day ? " he asked at last

" I think not," answered the Minister

" Nor to-morrow ? "

" Not for a day or two probably," answered the Minister

" Then we have a little time You see, it would not do to be premature To take sudden action would create almost as much

scandal as if it was all true Let us hope it is false I will try and detain the Prince at the Palace during the evenings Do you keep a watch upon the girl and report "

" The King's commands shall be obeyed," said the Minister

" And," added the King as the Minister was leaving, " just one thing Do you think the girl can really be so beautiful ? "

" It seems impossible," said the Minister

" There are so many beautiful women in the Palace," added the King, " if she is more beautiful than they, she is indeed a wonder I should like to be certain "

" I might go and see her and report to your Majesty," suggested the Minister doubtfully

" Do so," said the King " I would like to know If she is as beautiful as is reported, she is more dangerous than a conflagration. We must guard our young men Could you report, say, to-morrow ? "

" I will do my best," said the Minister

That evening and the next there was added to the spectators at the well an old man soberly clad He did not join any of the groups there, but remained hidden behind a tree He seemed to be enjoying himself, nevertheless, for he watched the people with interest Two days later the King had his report

" You say she is only fairly good-looking," asked the King

" That is all, your Majesty A good-looking country girl "

" How about the eyes ? "

" They are but medium-sized "

" And her figure ? "

" Stumpy," said the Minister, " thickset like village girls "

" Oh ! " said the King

" Her hair," continued the Minister, " is curly and short, and her hands are big "

" And her skin ? "

" It is fair and rather dull-coloured "

The King pondered " It is somewhat remarkable that the young men should run after a damsel like that, isn't it ? " he said

" Well," admitted the Minister, " she is a little pretty, no doubt But it is a whim Really she cannot compare with any of the ladies of the Court "

" You say, however," said the King, " that the Prince is smitten with her "

"It is so, your Majesty," answered the Minister

"And he does still go to the well?"

"He still goes, your Majesty. Possibly he may be bewitched. If I might suggest, it would be as well to send for the Prince and warn him severely not to go again. He is disgracing himself."

"Do you think he would obey?" said the King.

"All people obey your Majesty," answered the courteous Minister.

"But, in case of doubt, the Prince might be banished for a time. Indeed, that would, no doubt, be the best, as he is bewitched."

"I will consider it," said the King.

Now the King was a wise man, and when the Minister had left him he considered deeply. "I should like to know," he said to himself, "how it is that, while all other people find the girl a marvel of beauty, my Minister finds her plain. Also, why he is so anxious to have the Prince banished. If she is so plain, why the anxiety?" The more the King considered the more it seemed as if there was something he did not understand behind it all. "Perhaps the old man saw the wrong girl," he thought. "No, that explanation would not do. Perhaps the Prince bribed him to say she was plain. No, that wouldn't do either, for the Minister wanted the Prince banished. There was some mystery."

"Well," thought the King, "there is but one way. I will go and look for myself. There are no eyes like one's own for seeing." He looked in one of the mirrors and smiled. Yes, his eyes were clear enough—those of a young man still. Fifty Queens told him so every day, but, after all, a mirror is more truthful than any number of Queens.

That evening the King slipped quietly out of the Palace. It was given out as usual that he had a toothache and was not to be disturbed. Outside, by the monastery, he found his faithful attendant Maung San and two ponies. The King mounted one and they rode off.

It was not far to the gravediggers' quarter, and the King and his attendant soon arrived there. They were, of course, quietly dressed, so as to attract no attention.

"We will tie up our ponies in that grove," said the King.

So they rode up to the grove, but when they came there they discovered that they were not the first arrivals. Two other ponies were tethered there, ponies with handsome saddles and trappings.

"This won't do," said the King, "we must try another place."



But in the next grove it was the same, there were two ponies also tethered, very fine ponies. The King looked at them curiously. "This is remarkable," he said.

They rode on to a third grove, which was luckily untenanted. Here they left their ponies in care of a schoolboy, whom they called from a neighbouring monastery, and walked on towards the well. It was nearly sunset when they arrived.

"Be careful," said the King, "I do not want to be seen."

They took up their position behind the fragments of a small pagoda that had fallen down in an earthquake. It was conveniently situated, not too near the well, so that others would be likely to use it, but near enough to the path to enable them to see very clearly who passed.

"Have you seen this girl?" asked the King.

"I have, your Majesty," replied the attendant, smiling.

"Then you can point her out to me when she comes," said the King.

"She cannot be mistaken," said the attendant.

"So beautiful as that?" said the King.

Maung San laughed.

Presently the girl came down the path. The sun was just setting, and a crimson glow lit up all the open way. It gave to her a grace and a glory greater than had ever been hers. She seemed to the King a dream of love passing across the world.

The King gasped. His head peered from behind the pagoda, his eyes followed her as she went. "O Lord!" said the King.

When she came to the well she was hidden by the crowd of girls there drawing water, but still the King peered.

"Your Majesty's head," suggested the attendant.

"What?" asked the King angrily.

"It might be seen, and I thought——"

"You are right," said the King, drawing it in.

"She really is beautiful," he said presently to the attendant.

"She is, your Majesty."

"More beautiful than any of the ladies in the Palace," continued the King enthusiastically.

Maung San preserved a judicious silence.

"If she were dressed up properly," added the King, "she would be marvellous—a real Queen."

"But she is a gravedigger's daughter," suggested the attendant.

"Alas! so she is," sighed the King.

The girls at the well laughed and talked Their babble came up to where the King sat waiting for the gravedigger's daughter to return.

"Did you notice her hair?" asked the King

"I did, your Majesty"

"No curl about that, I think?"

"None," replied the attendant

"I wish I had that old Minister here," muttered the King "He ought to be beheaded"

"Your Majesty!"

"What?"

"That old Minister You wished he were here Well, he is here, I think"

"How?" demanded the King, aghast

"Here Behind that tree over there," replied the attendant, nodding to a big mango across the path "If that wasn't his old grey head sticking out when the girl went by I am greatly mistaken"

The King was perturbed

"Did he see me, do you think?"

"I do not think so," said the attendant "But I can easily call him"

"On no account whatever," said the King, sitting down

The sun set in great splendour across the far-off hills, the heavens lit into wonders of blue and green and crimson, dim shadows began to gather under the trees

"That girl is a long time," said the King

"I beg your Majesty's pardon," said the attendant

"What?" said the King

"There is not only the Minister here, but some one else too"

"Who?"

"One of the Princes, I think There, by the monastery gate."

The King looked out

"It seems to be he," said the King

The Prince walked slowly along the path, followed by one of his men He did not seem to be afraid of being recognised, possibly he did not by now care very much if he was Over his shoulder he consulted with his man

The King crouched back behind the pagoda wall

"I tell you I am sure it was he," said the Prince angrily "I saw his stupid old grey head. What do you suppose he has come for?"

"To spy on your Highness," suggested the follower

"To spy on the girl, more like," said the Prince "Oh, those old men! I tell you——"

The Prince broke off suddenly

"And there was some one else, too."

"Who?" asked the follower

"Well, I am not sure," said the Prince, "but I saw some one loafing along, and I am sure I knew his walk. Another Minister, I guess. Shocking old men!"

"Here is the girl coming," said the follower.

The Prince moved off the path and came very near where the King was hiding. Fortunately there was a low brick wall between them.

"Don't breathe," whispered the King to Maung San.

The girl came up the path, her jar upon her head, swinging along proudly. The evening was very hot and she had been bathing at the well. Her hair hung behind her in a great long mass, coming below her hips, and the wet garment clung to her limbs. She was superb. Beneath the thin cloth the Prince marked the undulations of her figure, the curves of her bosom, the grace and liveliness of her movements.

"You are fifty times a Queen," he murmured as she passed.

The King, crouching behind the wall, could see nothing.

"Well," said the Prince, "let us be off now and make arrangements. What time would be the best?"

"I should suggest midnight," said the follower.

"What! and give those old Ministers time to snatch her off before! No fear. In an hour."

"It will hardly be dark," suggested his follower.

"So much the better," said the Prince. "I do not want to run any risk."

The King rose from his seat on the ground and peered out after the girl. But he was too late, she was gone. Then he turned round and looked at Maung San.

"What is to be done?" he said.

"The Prince will carry her off in an hour," said Maung San.

"The Prince must not carry her off at all," said the King.

"Shall I go for assistance?" asked Maung San.

The King pondered.

"No! it would be too late. Go at once to the headman and tell

him that a high officer is waiting here with orders to take the girl away. The headman and the girl and her father must be brought here now. I will wait for you "

" What official shall I say ? " asked Maung San

" You can say the chief Minister," replied the King " It cannot hurt his reputation, anyhow "

" When we get her what are we to do with her, your Majesty ? " asked Maung San curiously

" I will consider that while you are away," said the King severely

The King sat down to consider The light was waning now, and the stars were coming out The girls grew fewer and fewer until the path was almost deserted From the monastery near by the gongs began to ring

" It is a difficult business," said the King to himself " She is far too pretty to hurt "

Then he considered more and more deeply A thought seemed to enter his head to be dismissed with decision The Queens would go mad Fifty mad Queens " No ! it could not be done," he muttered sadly, " even though I am King "

The dusk grew deeper The path was deserted It must be nearly an hour since Maung San went away, and the King grew anxious He peered out over the wall At last he saw them coming

" Where is the girl's father ? " asked the King

" We could not find him," answered Maung San, " and this headman has given no end of trouble He wouldn't believe me I nearly had to kill him Fortunately a man came up who knew me "

" He shall be executed to-morrow," said the King

The headman threw himself upon the ground " Mercy, mercy," he said

" Now come on," said the King, " you go in front with the girl I will come behind her Do not try to run away," he added to her

" I won't," said the girl

" By the by," said the King aside to Maung San, " that man in the village knew you Did he know me ? "

" He knew you were the chief Minister," replied Maung San

" Oh ! all right," said the King

Then they started First Maung San, then the girl, then the King with his eyes glued upon her

The King turned a moment to say to the headman, " You'll be

executed to-morrow," and they went on. The ponies were still in the grove, and they went in that direction first.

"Don't be frightened," the King said to the girl. "We won't hurt you. Only do not try to run away."

There was a tremendous outbreak in the village behind, men shouting, women shrieking.

"Where is he?" a voice cried, and there was a babel of replies. The King glanced at Maung San and they hurried on. They did not go down the path but across a field towards a plantation. They were, however, too late. A horseman galloping down the path saw them and gave a yell. They were pursued. In a moment they were overtaken and surrounded.

The Prince jumped down from his pony and came up to them.

"You wicked man," he said, addressing his elder brother, "you wanted my girl. I saw you near the well this evening. Who are you, anyhow?"

The King did not answer, and the Prince went up and peered into his face.

"Oh, good Lord!" he said, recoiling.

The King was a trifle embarrassed. "If you sent away your men it would be better," he said.

"Go away," roared the Prince. "Go right home. Don't stay a moment, or——" But his men had fled.

"You see," said the King scornfully to the Prince, "what your wicked doings have obliged me to. You were about to take this girl, the gravedigger's daughter, as your mistress. Think of the scandal I had to save you from, and so——"

"You ran away with her yourself. It was very good of you," murmured the Prince.

"I was about to send her right away from here, with Maung San," said the King.

"With Maung San?" asked the Prince.

"With me?"

"With you," said the King to Maung San.

"I am deeply grateful," said the Prince.

"So am I," said Maung San.

"You both should be," said the King.

"You will take her," said the King to Maung San, "to your house in the city, and thence to the steamer. One sails for Lower Burma

to-morrow morning You will see her to the frontier I will send you money to your house to give her It is a pity her father is not with her "

" We will try to get along without him," said Maung San

" We will," said the girl

" Then you will return and report "

" Of course, your Majesty," said Maung San

" And if you ever return," said the King to the girl, " you will be executed What is that clattering ? "

And indeed there was a clattering A man was galloping down upon them fast, followed by two others He rode recklessly

" Now who should this be ? " said the King

The horseman rode up to them and then leapt from his pony to seize the girl

" That girl is mine," said he

" No," said the King , " on the contrary, she's mine "

" Or mine," said the Prince

" I think mine," said Maung San meditatively

The girl said nothing , she smiled

The newcomer, angry at this opposition, came pressing forward

" Who are you ? " he said

" I am the Prince," said the Prince

" And I am the King "

" And you are the Minister," added Maung San

The Minister fell flat upon his face

" I came," he said, " to take away the girl so that the Prince should be saved There was no time to consult your Majesty," said he

" Certainly, I understand," said the King with a smile

" But His Majesty was before you," said the Prince

" There was no time to consult you," said the King, echoing the Minister's words

The King and the Prince and the Minister went home together to the Palace Maung San escorted the girl to his own house in the city.

Among the fashionable arrivals at Prome about ten days later were a wealthy Mandalay merchant and his most beautiful wife He gave out that he had come down to trade in elephants He seemed to have plenty of money, and some even declared that he was of consequence, for they had seen him in the Palace, they thought His name was Maung San As to his wife, she was the daughter of a country farmer. They were a great success wherever they went.

L. P. JACKS

B. 1860

## THE DEATH OF SNARLEY BOB

“**H**E'D a rough tongue, sir, but he'd a good 'eart,” said the widow of Snarley Bob “Oh, sir, but he were a wonderful man, were my master I never knowed one like him—no, nor never 'eard o' one I didn't think on it while he were living, but now he's gone I know what I've lost That clever! Why, he often used to say to me, 'Polly, there ain't a bit of blessed owt as I couldn't do, if I tried' And it were true, sir And him nothing but a shepherd all his life, and never earned more'n eighteen shillin' a week takin' it all the year round And us wi' a family of thirteen children, without buryin' one on 'em, and all married and doin' well And only one fault, sir, and that not so bad as it is in some He *would* have his drop of drink—that is, whenever he could get it Not that he spent his wages on it, except now and then after the children was growed up But you see, sir, he was that amusin' in his talk, and folks used to treat him

“Well, sir, it was last Saturday fortnight, as I was tellin' you, he come home for the last time I can see 'im now, just as he come staggerin' in at that door I thought when I saw him that he'd had a drop o' drink, though he'd not been 'avin' any for a long time So I sez to myself, 'I'd better make 'im a cup o' tea,' and I begins puttin' the kettle on the fire 'What are you doin'?' he sez 'I'm goin' to give you a cup o' tea,' I sez, 'it'll do yer good' 'No, it won't,' he sez, 'I've done wi' cups o' tea in this world' 'Why,' I sez, 'what rubbish! 'Ere, sit yer down, and let me pull yer boots off' 'You can pull 'em off,' he sez, 'but ye'll never see me put 'em on again'

“I could see by this that it wasn't drink, besides I couldn't smell any So I gets 'im into his chair and begins pullin' his boots off 'What makes you talk like that?' I sez 'You knows as you was ever so much better last night. When you've had yer medicine you'll be all right' He said nowt for a time, but just sat, tremblin' and shiverin' in his chair. So I sez, 'Hadn't you better 'ave the doctor?' 'It's no good,' he sez, 'I'm come 'ome for the last time It'll be good-bye

this time, missis ' 'Not it,' I sez, 'you've got many years to live yet Why, wot's to make yer die?' 'It's my 'cart,' he sez, 'it's all flip-floppin' about inside me, and gurglin' like a stuck pig It's wore out, and I keep gettin' that faint' 'Oh,' I sez, 'cheer up, when you've 'ad a cup o' tea you'll feel better', but I'd hardly got the words out o' my mouth before he were gone in a dead faint

"We got 'im to bed between the three on us, and, my word, it were a job gettin' 'im up them narrer stairs! As soon as we'd made 'im comfortable, he sez to me, 'Wot I told yer's comin' to-night, Polly They've been a-callin' on me all day I see 'em and 'ear 'em, too Loud as loud Plain as plain' 'Who's been callin' yer?' I sez 'The messengers o' death,' he sez, 'and they're in this room, four on 'em, now I can 'ear 'em movin' and talkin' to one another' 'Oh,' I sez, 'it's all fancy What you 'ear is me and Mrs Rowe You lie quiet and go to sleep, and you'll be better in the mornin'' He only shook his 'ead and said, 'I can 'ear 'em'

"Well, I suppose it was about 'alf a' hour after this when Mrs Rowe sez to me, 'He looks like goin' to sleep now, Mrs Dellanow, so I think I'll go 'ome and get my master 'is supper', and she was just goin' down the stairs when all of a sudden he starts up in bed and sez, 'Do you 'ear that whistle blowin'' 'No,' I sez, 'you've been dreamin' There isn't nobody whistlin' at this time o' night' 'Yes, he sez, 'there is, and it blowed three times There's thousands and thousands of sheep, and a tall shepherd whistlin' to his dog But he's got no dog, and it's me he's whistlin' for'

"Now, sir, you must understand that my 'usband when he was with the sheep used to work his dog wi' whistlin instead of shoutin' to it as most shepherds do You can see his whistle hangin' on that nail—that's where he hung it 'isself for twenty-five years You see, he was kind o' superstitious and used to say it was bad luck to keep yer whistle in yer poçket when you went to bed So he always hung it on that nail, the last thing at night

"'Why,' I sez, tryin' to humour 'im, 'it's his dog he's whistlin' for, not you His dog's somewhere where you can't see it He doesn't want you You lie back again, and go to sleep' 'No, no,' sez he, 'there's no dog, and the sheep's runnin' everywhere, thousands on 'em It's me he's whistlin' for, and we must whistle back to say I'm comin' Fetch it down from the nail, Polly There he is again! He's the tallest



shepherd I ever saw He's one of them four that was in the room just now Whistle back, Polly, and then it'll be all right' And so he kep' on, again and again

" Mrs Rowe, who'd come into the room, said to me, ' If I was you, Mrs Dellanow, I'd fetch the whistle and blow it It'll quiet 'im, and then p'raps he'll go to sleep '

" You can understand, sir, that I was that upset I didn't know what I was doing But when he kep' on callin' and beseechin' I thought I'd better do as Mrs Rowe recommended So I went down and took the whistle from that nail—the same where you see it hangin' now When I got back I couldn't somehow bring myself to do it, so I gives it to 'im to blow 'isself But, oh dear, to see the poor thing trying to put it to his mouth it a'most broke my heart So I took it from 'im, and blowed it myself three times as he wanted me To think o' me standin' by my own 'usband's dyin'-bed and blowin' a whistle!

" When I'd done, he says, ' That's all right, he knows I'm comin' now But it'll take a long time to gather all them sheep '

" For a bit he was quite still, and both me and Mrs Rowe sat watchin', when, all of a sudden, he starts up again and sez, ' Listen, he's goin' to blow again ' Well, sir, I dare say you won't believe what I'm going to tell yer, but it's as true as I'm standin' 'ere He'd hardly got the words out of his mouth when I hears a whistle blown three times—leastways I thought I did—as it might be coming from the top of that 'ill you see over there There weren't no other sounds, for it was as still a night as could be But there was some one whistling, and Mrs Rowe 'eard it too If you don't believe me, you can ask her I nearly dropped on the floor, and I knew from that minute that my 'usband was going to die

" You see, sir, my 'usband was never what you might call a religious man He were more of a readin' man, my 'usband was—papers and books and all sorts o' things—more'n was good for 'im, I often used to say You can see a lot on 'em on that little shelf If it hadn't been that they kep' 'im out o' the Nag's Head I'd ha' burned some on 'em, that I would, and I often told 'im so He knowed a wonderful lot about the stars, my 'usband did Why, he'd often sit in his chair outside that door, smokin' his pipe and watchin' 'em for hours together

" One day there was a great man came down to give a lecture on the stars in C——, and a gentleman as knowed my 'usband's tastes paid

his fare and gave 'im a ticket for the lecture When he came 'ome he was that excited I thought he'd go out o' his mind He seemed as though he could think of nothing else for weeks, and it wasn't till he began to ha' bad luck wi' the ewes as he was able to shake it off He was allus lookin' in the paper to see if the gentleman as give the lecture was comin' again His name was Sir Robert Ball I dare say you've heard on 'im

"He used to spend all his Sundays readin' about stars No, sir, he 'adn't been inside the church for years 'Church is for folks as knows nowt about the stars,' he used to say 'Sir Robert Ball's my parson' One night when he was sittin' outside the door, I sez, 'Why don't you come in and get yer supper? It's getting cold' 'Let it get cold,' he sez, 'I'm not comin' in till the moon's riz It's as good as a drop o' drink to see it'

"P'raps he told yer all about that time when he was took up wi' spiritualism He'd met a man in the public-'ouse who'd 'eard his talk and put 'im up to it They got 'im to go to a meetin' i' the next village, and made 'im believe as he was a medium Well, there never was such goin's-on as we 'ad wi' 'im for months He'd sit up 'alf the night, bumpin' the table and tan-rannin' wi' an old bucket till I was a'most scared out o' my life But that winter he was nearly carried off wi' the New Mony, and when he got better he said he wasn't goin' to touch the spirits no more 'There's summat in it,' he sez, 'but there's more in the stars' And from that day I never 'eard 'im so much as talk about spirits, and you may be sure I didn't remind 'im on 'em

"You must ha' often 'eard 'im talk about the stars, sir Well, I suppose them things makes no difference to a' eddicated gentleman like you But poor folks, I sez, has no business to meddle wi' 'em All about worlds and worlds floatin' on nothin' till you got fair lost Folks as find them things out ought to keep 'em quiet, that's wot I sez Why, I've 'eard 'im talk till I was that mazed that I couldn't 'a said my prayers, no, not if I'd tried ever so

"Yes, sir, it were a strange thing that when my 'usband come to die his mind seemed to hang on his whistle more'n a'most anything else He kep' talkin' about it all night, and sayin' the tall shepherd was answerin' back, though I never 'eard nothin' myself, save that one time I told yer of.

“ ‘It’s queer he don’t talk about the stars,’ sez Mrs Rowe to me ‘He will do before he’s done, you see if he doesn’t,’ I sez

“ Well, about three o’clock I see a change in his face and knowed as the end wasn’t far off So I puts my arm round his old neck, and I sez, ‘Bob, my dear, are you prepared to meet your Maker?’ ‘Oh! I’m all right,’ he sez quite sensible, ‘don’t you bother your head about that’ ‘Don’t you think you’d better let me send for the parson?’ I sez ‘No,’ he sez, ‘but you could send for Sir Robert Ball—if you only knew where to find him’ ‘But,’ I sez, ‘wouldn’t you like somebody to pray with yer?’ Sir Robert Ball’s no good for that ‘He’s as good as anybody else,’ he sez ‘Besides, what’s the use of prayin’ now? It’s all over’ ‘It might do yer good,’ I sez ‘It’s too late,’ he sez, ‘and I don’t want it It isn’t no Maker I’m goin’ to—I’m goin’ to the stars’ ‘Oh,’ I sez, ‘you’re dreamin’ again’ ‘No, I’m not,’ he sez ‘Didn’t I tell yer they’d been a-callin’ on me all day? I don’t mean the stars, but them as lives in ’em’

“ No, sir, he wasn’t wanderin’ then ‘I wish the children was ’ere,’ he sez, ‘but you couldn’t get ’em all in this little room My eye, what a lot we’ve ’ad! And all livin’ And there’s Tom got seven of ’is own’ And a lot more like that, but I was so upset and cryin’ that I can’t remember half on it

“ About four o’clock he seemed to rally a bit and asked me to put my arm round him and lift him up So I raises him, like, on the pillow and gives him a sup o’ water ‘What day o’ the week is it?’ he sez ‘Sunday mornin’,’ I sez ‘That’s my day for the stars,’ he sez, and a smile come over his face, as were beautiful to see No, sir, he weren’t a smilin’ man, as a rule—he allus got too much on his mind—and a lot o’ pain to bear too, sir Oh, dear me! Well, as I was a-sayin’, he were as glad as glad when he heard it were Sunday ‘What’s o’clock?’ he sez ‘Just struck four by the church clock,’ I sez ‘Then the dawn must be breakin’,’ he sez, ‘look out o’ the winder, there’s a good lass, and tell me if the sky’s clear, and if you can see the mornin’ star in the south-east’ So I goes to the winder and tells him as how the sky were clear and the mornin’ star shinin’ wonderful ‘Ah, she’s a beauty,’ he sez, ‘and as bright as she were millions o’ years ago!’

“ After a bit he sez, ‘Take yer arm off, Polly, and lay me on my right side’ When me and Mrs Rowe ’ad turned ’im round he sez, ‘You can fetch the old Bible and read a bit if you like’ ‘What shall

I read ? ' I sez, when Mrs Rowe had fetched it, for I wouldn't leave 'im for a minute, ' Read about the Woman in Adultery,' he sez ' Oh,' I sez, ' that'll do you no good You don't want to 'ear about them things now ' ' Yes,' he sez, ' I do It's the best bit in the book But if you can't find it, the Box o' Hointment'll do as well ' ' What can he mean ? ' I sez ' He means about them two women as come to our Lord,' sez Mrs Rowe ' 'Ere, I'll find 'em ' So I give the Bible to Mrs Rowe and lets her read both of the bits he wanted

" While Mrs Rowe was readin' he lay as still as still, but his eyes were that bright it a'most scared me to see 'em When she'd done, he said never a word, but lay on 'is side, wi' 'is 'ead turned a bit round, starrin' at the window ' I'm sure he sees summat,' sez Mrs Rowe to me ' I wonder wot it is,' I sez ' P'raps it's our Lord come to fetch 'im,' she sez ' I've 'eard o' such things '

" He must ha' lay like that for ten minutes, breathin' big breaths as though he were goin' to sleep Then I sees 'is lips movin', and I 'ad to bend my 'ead down to 'ear what he were sayin' ' He's a-blowin' again It's the tall shepherd—'im as wrote on the ground—and he's got no dog, and 'is sheep's scatterin' It's me he wants Fetch the old whistle, Polly, and blow back I want 'im to know I'm comin' "

" He kep' repeatin' it, till 'is breath went I got Mrs Rowe to blow the whistle, but he didn't 'ear it, and it made no differnce And so, poor thing, he just gave one big sigh and he were gone."

## THE HEART OF THE WOOD

### I

**I**T was all the mother's fault, every one said that, but in London people are forgotten so quickly that three months after the divorce no one said anything. Yet even for the mother there were extenuating circumstances. Nina was beautiful, and naturally Lady Leabridge thought she might do better than marry an actor. Ackersley was a gentleman, had been in the Hussars—a crack regiment, but couldn't afford to keep it up, chucked it, and went on the stage. He was extremely good-looking, and had a curiously magnetic manner. All the town went to see him, and agreed that he couldn't act a bit, but he was delightful to listen to and to look at, or to invite to Sunday luncheons and late evening parties. Women fell in love with him in rows, but never dreamt of wanting to marry him, or of expecting him to marry them. And it was obvious that matrimony was the last thing he contemplated till he met Nina Leabridge.

She was a tall white-faced girl of twenty, with a beautiful mouth, strange blue eyes, and quantities of dark hair with a crink in it. Her mouth seemed made for smiles, and her eyes for tragedy. The combination haunted Ackersley for three days, then he saw her again—at Lady Dolche's, on Sunday, at tea-time. He thought afterwards that he must have known she was coming, for he looked across the tea-table at the Louis-Seize clock on the mantelpiece—it said twenty to five. He waited impatiently for the quarter, as the minute-hand pointed to it the door opened and she entered. The rest followed. At the end of a fortnight they were engaged on the quiet, for the girl knew her mother so did Ackersley, though he had only had the pleasure of her acquaintance for a week.

Lady Leabridge grasped the situation as soon as she gained an uninterrupted view of it, but she said nothing and was much too clever to appear suspicious. She contrived to let Ackersley know, in quite a casual way, that Nina had expensive habits and not a penny of her own. This had no effect. She explained to Nina, also in quite a casual way—or she hoped so—that actors were nobodies, and that,

no matter how fascinating Ackersley might be, men in his profession were never faithful long to any one woman. Nina explained that time had changed the social position of the actor, and that many somebodies were on the stage. Then, being a fool, though a sweet one, she added, vehemently, "As for his not being faithful, why, mother! what matters is to be loved with all the heart and soul of the man you love, and whether it lasts for a long time or a short time, it is a woman's crown, and a glorious one, even if it is followed by a martyrdom."

Lady Leabridge laughed, and told her that this was poetic rubbish. But she saw that the matter was serious, so she developed symptoms of something, she was not quite certain what, that served as an excuse to carry her girl off to Homburg. There, without any scruple, and with the help of her maid, she pocketed the letters and telegrams on both sides, and wrote Ackersley a few lines, in which she said that her daughter had confided in her, and begged her to put an end to the foolish entanglement. Nina, she added, was full of charming dreams, of which he had been one—she had had many. Ackersley was furious, and having just one set belief regarding women, cursed Nina with all his heart—as he did himself later. But his passion for her developed into something that swept him off his feet, and made him almost incoherent, so that his manager wondered if he were taking to drink, and whether the understudy could be trusted with his part if he failed to turn up any evening.

At Homburg Lady Leabridge added dangerous symptoms to her unknown complaint and threatened to die. She managed to be pathetic, yet not to keep her bed, declared that she felt stifled indoors, and went out in a bath-chair. Nina stood or walked by the chair, looking more beautiful than ever, the other sex wandered by, and at the end of a fortnight—even Lady Leabridge never knew how it was managed—she was engaged to a dyspeptic Marquis of forty-nine. A special licence made everything safe, at St. James's, Piccadilly, the morning after their return to England. The hurry was accounted for by the fact that Lord Barkston had arranged to start on a yachting tour, which was adroitly turned into a honeymoon.

Ackersley threw up his engagement and went to Alaska. When he returned he took a London theatre, posed as an actor-manager, and ran a piece that every one said was rubbish, but went in crowds to see, since he kept the leading part for himself. When he had made enough money, he suddenly reappeared in London drawing-rooms, and



Russ 1

*Luey (Lifew)*

(Miss Clifford)





hunted round them for Nina. He soon met her, older by two years, bored, miserable, desperate. The inevitable explanation followed. He counted his gains, studied a Continental Bradshaw, flew about in hansoms, and even went to tea with women—who found him more adorable than ever. But it was a significant thing that, though Lord Barkston went out of his way to show him civilities, Ackersley never once entered the house in Grosvenor Gardens—all his interviews with Nina occurred elsewhere. "There are some things even a scoundrel doesn't do, unless he is a cad as well," he thought, as he walked away from the door one afternoon.

A month later London was edified with the news of an elopement, and Lord Barkston was seeking his revenge with Sir Francis Jeune.

Ackersley married her as soon as the decree was made absolute. He considered it a concession to the people who couldn't stick to each other without taking oaths and signing names, but there was nothing he wouldn't have done for Nina. And, after all, a woman likes to have her marriage lines, even if they only come from a Registrar's Office, and she is described as divorced in them. After the marriage they disappeared completely, wandered about the earth under another name, and felt, for the first year or two at any rate, as if they had filched the ground on which they walked from heaven, and established a squatter's right to it.

## II

Five years later it occurred to Algernon Gill—thirty-four and in the Treasury—that it would be amusing to buy a bit of land and build a red brick cottage on it. The difficulty was to find a place. Some one told him of Cheverley, on the Rickmansworth line, less than an hour from London, no residents to worry him, nice village, an inn that had good stabling, woods and low hills beyond. But he forgot all about it, till one afternoon he drove past the Baker Street Station. He pulled up, and two minutes later was on the platform. The train started in a quarter of an hour.

A spot of blackness to Finchley Road, then the greenness of the country-side, past Pinner and some places of which he could not even see the names, and on with a rush to Cheverley. A quiet little station, that looked as if it had been dropped out of a dream from which the two or three people who were visible had hardly awakened. Gill stood

outside and hesitated To the right was a green lane—possibly the short way to the village half a mile beyond, to the left a winding road, evidently the long way No flies, a jogging cart some way off, coming nearer, but that was all, save the rising distance He felt a little puzzled, then bethought him that a whisky and soda would be the right thing There was a refreshment-room at the station, he wheeled round and entered it A long, bare counter at one end, at the other, seated by a marble table, an old man, with a violin-case and harp in a green baize bag set down beside him While the young lady was getting the whisky, the jogging cart from the distance arrived Some one entered and went up to the fiddler

"Sorry to be late Are you ready?"

"Quite ready, sir" The musician struggled to his feeble feet Gill put down his whisky, a vision of boyhood rose before his eyes He turned and saw Ackersley The two men looked at each other for a moment half in doubt, then each stretched out a hand

"By Jove!"—the old magnetic quality came into the voice—"this is luck, never thought to see you again How did you get here?"

"How did you?" Gill asked, when he had explained himself, "and where are you?"

"Three miles off, isolated little place, thirty acres, mostly wood Come and see it? The trap's here——" Ackersley stopped and coughed

Gill saw him plainly as they went out to the open, and was startled "You are ill, old chap," he said "What's the matter?"

"Not much at the present moment The devil has been hacking at me, but I shall be even with him soon"

He laughed, and Gill felt that if a dozen women had run away with him they would have been justified The trap—it might have belonged to a grocer in its better days—was shabby, the cob a roarer, the harness a thing of knots and patches

"Not much to look at, is it?" Ackersley said "Now then, Liggins!" The fiddler scrambled up to the back seat, Ackersley handed him the harp and fiddle, took the reins, and so they started along the country road "I never thought to set eyes on you again," he said, almost affectionately—Gill of course was beside him—"it cheers me no end"

" But——" Gill hesitated , he was afraid to ask questions " You are not alone here ? "

" Oh no, half-a-dozen fellows staying with me just now—a rummy set," Ackersley added, after a moment's hesitation " God's leavings, as we are I meant to write to you as soon as I had the nerve I haven't much left—or anything else "

Gill noticed that the cuff of his coat was shabby, he looked different altogether from the man of former days " Hard up ? " he asked remembering that Ackersley had put the same question to him ten years before, and carelessly lent him a couple of hundred that saved him from bankruptcy

" On the contrary, in that one particular the devil has been good to me He put me on to the deep levels—I dipped into them during a slump, and bounded out during a boom " They went on in silence for a few minutes The ground was rising, the landscape asserting itself Presently Ackersley spoke again " You must stay the night," he said " I should like to show you the place "

" Is it much farther ? " They had driven a couple of miles by this time

" It's there " Ackersley pointed to the wooded side of the hill " The house is on a little clearing in the midst , you can't see it from the road " They turned a corner , the wood looked older and thicker In its midst, from a high mast, floated a gay little flag " I did that," he said, with a defiant chuckle , " it's in the heart of the wood—stands well up, doesn't it ? We sling a lamp to the top every night , it glimmers on the country for miles round fine theatrical effect of its sort ? "

" What on earth do you want with a theatrical effect here ? "

" There's nothing like one for blunting the edge, and helping you through—prevents the real thing from having it all its own way "

" I don't understand "

" You will some day—if you ever go through the mill Should have thought, though, that you could understand, even now, that life is sometimes too bare and grim to face unless it is decked with a few emotional effects That's where the teaching of the theatre comes in—it suggests dodges we all put into practice at some time or other without knowing the meaning of them "

" Why don't you go back to the theatre ? " Gill asked " You would have a splendid——" He looked at him, and the rest of the

sentence died away on his lips They were silent for a minute , then, with a jerk at the reins, Ackersley went on—

“ I have had enough of every show but my own , the one I am planning up there, I mean You must come into it I have been wondering how to get up a big enough company The servants are the supers, and Liggin is the orchestra ” He looked over his shoulder “ Liggin, we must show Mr Gill our waxworks ” He turned and explained “ Mr and Mrs Septimus Liggin—fine name, isn’t it?—were in charge of the place when we found it It had been shut up for ten years Liggin fiddles, or plays the harpsichord, at dances for miles round, and pursued his profession from there When the harp was preferred he used to carry it to the entertainment on his back—till we set up this carriage—didn’t you, Liggin ? ”

The old man nodded in a half-idiotic manner “ Had to, sir, except when the violin would do ”

“ Fiddle, say fiddle, Liggin, not violin Long way to carry it, wasn’t it, from Cheverley Hall ? ” He turned to Gill again “ The place is as big as a suburban villa, and it’s called Cheverley Hall It’s not bad, though Mrs Liggin didn’t like being left alone before we came, so she beguiled her leisure by making wax flowers Liggin brought back glass shades from Pinner to put over them, and took them to a fair, when he heard of one, to be raffled for—the unsold decorate the staircase ”

“ But, Ackersley, how did you find the place ? ”

“ Beckersley,” Ackersley corrected in an undertone “ We moved a letter on in the alphabet and called ourselves Beckersley , it saved the trouble of changing the Barkston initials on the hair-brushes We came by chance,” he went on, “ strolled past the gates, saw a board up—thirty acres, house going to ruin, grounds overgrown, executors anxious to get rid of it We bought it right out—freehold—no one to interfere, no neighbours, only Liggin and his wife They stayed on , son came back from Egypt with a blind eye and a game leg , daughter in service at Harrow, got stone deaf, had to give it up We kept on the lot ”

“ Do you know any one in the neighbourhood ? ”

“ Only the doctor, a decent chap He settled here because there wasn’t much to do, and it is his habit to get drunk from Saturday night to Monday morning in the seclusion of his home They are too pious in the village to have their broken bones set on the Sabbath or their

lives saved    They make an exception for their souls, but that's another matter "

" You seem to be a lively lot "

" We are," Ackersley answered viciously, and flourished the whip over the cob    " You are right—we are    This is the beginning of the ground "    He pointed to a rabbit fence, in good condition, high, newly painted, and with barbed wire on the top    " We put that ghastly stuff on it for fear the Bank Holiday maker should want to get in and look round    But I always regret that it keeps out the tramp—he is generally a bit sick and sorry, and wants to creep in    I shall make it up to him "

### III

At the gate a lame man with a patch over one eye limped forward    " Take the cart," Ackersley said, getting down ,    " we are going to the wood "    He made a sign to Gill, and led the way slowly, as if the exertion tired him    The trees were high and close, great beeches and oaks and lindens that interlaced , beneath them was a trailing tangled undergrowth of bracken and blackberry, ground ivy and foxglove, of anything that grew wild and in the shade    Through it, here and there, were narrow tracks

" It's like a primeval forest," Gill said, as he followed    " But you must have made these paths    Why, how did these get here ? "    he exclaimed, in astonishment, for, in the thick of the wood, tall white lilies and standard rose-trees stood up clear and firm above the mass of wilderness at their feet

" We stuck them in—Nina and I "    Ackersley put his back against the moss-grown trunk of a tree and faced his friend    The withered leaves of a bygone winter and the rank growths of summer scrunched under his feet. It was the first time he had mentioned her name

Gill gathered courage    " Where is she ? " he asked

" Here "    Ackersley jerked his head backwards    " Beneath the flag by day and the lamp by night    I told you it was a theatrical effect "

" You mean——"

" I mean that she's dead "

Gill went a step forward and put out his hand, but Ackersley only faced him defiantly

"It doesn't matter," he said, with a short laugh, "she got drunk most nights during the last year or two"

"Great God!—" Gill was horrified, but in some sort of cynical fashion Ackersley was amused

"I never understood how she got it after we came here Odd thing, isn't it?" he said callously, "if a woman chucks over her claim to one virtue she'll often have a shy at all the others without turning a hair" He stopped, but only for a moment "It was splendid," he went on, "for the first two years Then one day, at Triberg, going up to the waterfall—you know, the confounded thing they illuminate at night—she came face to face with an old harridan she had known formerly, who stared her straight in the face, gathered her skirts, and passed on" He turned and went a few steps forward, then stood still again, looking at Gill "Strange, wasn't it? It woke her up, I suppose, she was never the same woman afterwards If I hadn't appeared she would have gone on with Barkston, whom she hated, to the end of her days, a pattern of virtue, lived to be seventy, perhaps, and become as worldly as the worst of them But, with me—though she loved me," his voice trembled for a moment—"because she had broken loose from an infamous bond that the Church and the devil between them had cemented, she was never satisfied, after she realised that she was outside the pale The fangs of respectability had fastened themselves so firmly into her soul that it was death to pull them out And that accounts for the degradation of most women"

"But when you came here?"

"It began the year before, she died the year after—and she is there"

"You might have put her in consecrated ground"

"Packed her among mouldering corpses, with the worms carrying messages between them—no, thank you Besides, the Church wouldn't marry us Why should it bury us? She loved this wood in her best hours—and she is here in the heart of it"

"And the village people, the doctor and parson, for instance—"

"The doctor is a pal of mine, his brother, a little attorney living at Rickmansworth, does my legal business, the village people are three miles off But I needn't give you details, they are neatly dovetailed"

"And you live here alone?"

"Oh no. There are half-a-dozen men I picked out of the gutter

—drunken sots who had gone under—God's leavings They are waiting to finish themselves off till I am through, and they have drunk to our last meeting here in the wood, as they let me down to her Excellent, isn't it? Planning it amuses me immensely, though when it comes off I shall not even hear the chink of their glasses "

" You are mad, Ackersley "

" Say Beckersley Not a soul here knows my real name, or ever will " He stopped for a moment and his voice changed " I may be mad, but I'm pretty miserable, and nearly played out," he said " It's only the theatrical side of the business that helps me And I've done for myself, as she did, and I'm going out by the same gate—I want to be lost with her through all eternity in the heart of the wood, as for a little while we were once lost in the heart of the world "

" You have played the fool with your life, poor chap "

" A wild game, but worth playing, for I have had the best love of a woman," Ackersley said, with the smile that made Gill love him " You must come and see my guests They get drunk occasionally still, when they can outwit me or bribe Liggins Sometimes we have a wild orgy together We will to-night—the Rickmansworth whisky is poison, but that is part of it "

" Does Lady Leabridge know anything——"

" No," Ackersley answered fiercely, " and never will I wish I could see her strung up She did it all when she married Nina to Barkston But what it comes to is this, that there is nothing so safe, or, take it altogether, so successful, as your well-conducted middle class British home, presided over by the City-going father, and the wife-of-your-bosom-mother-of-your-children sort of woman, no aspirations beyond a tolerable table, decent dress, and a month in the country or Switzerland once a year, no schemes beyond placing the boys out, seeing the girls marry men like their fathers, or getting into the professions open for women These people are the backbone of the country's prosperity and morality, they are a part of the constitution, just as roast beef is, or the morning paper and the pantomime at Christmas But, come—I'm not going to take you there to-day——" He looked towards the dark masses of the wood " There's nothing to see, not even the conventional mound I want to show you the house, and to-night we'll get as drunk as lords "

" I won't," Gill burst out " The whole thing is horrible I'm

going back to town There's a train at 6 20 I shall walk down and catch it I can't stand any more of this "

" Nonsense ! man , it's a way through—that's all that most of us find in the long-run "

But Gill caught the 6 20 train

#### IV

The telegram came four months later , it was the only intimation he had of the end " *Mr Beckersley's funeral is at two o'clock You are expected "*

It was nearly half-past one when he reached Cheverley No one met him, and he was glad of it The walk did him good A short, grey man, with a curt, decisive manner, was standing at the gate

" Mr Gill ? I was Mr Beckersley legal adviser—my brother was his doctor," he added " I fear they have gone to the wood, but no doubt they will wait for us " He led the way, as two months before Ackersley had done, but now the blackberry time was over, the leaves were falling, the bracken was brown, the north wind stirring among the high branches Quite suddenly, deep in the wood, they came to an open grave A little apart, half-a-dozen men, old, most of them bleary-eyed and curiously forlorn-looking, huddled as close together as the vegetation would let them, helplessly waiting Liggin was there with his harp By him stood a woman holding a little stand of wax flowers, but no glass shade covered them When Gill came in sight, Liggin moved his harp to the head of the grave , the lame man with the black patch over his eye went to the foot, carrying a basket that held some bottles of champagne and a dozen glasses A few yards ahead was the mast lying among the underwood, its little flag torn by a bramble Four men in black, business-like and inscrutable, waited by a plain coffin, on which there was no name, nothing to identify it A red-faced man came forward, and in a hushed voice greeted Gill

" I was our eccentric friend's doctor," he explained , then, turning to the four men in black, and giving a comprehensive nod round, he said, " We can go on now " The bleary-eyed mourners straightened themselves, and drew near, stumbling a little over the uneven, difficult ground Liggin's fingers wandered to his harp, and slow and uncertain the notes of " Old Lang Syne " came from the strings The lame man poured out the champagne, and offered a glass to Gill, who shook his



head, but the rest each took one and waited with it untouched "I feel sure," the doctor said deferentially to Gill, "it would hurt our friend if he could know that any of us refused to carry out his strange idea He wanted us to drink to their last meeting" Gill hesitated, then reached out his hand

"Give me some," he said, "I'll drink to it" The coffin was slowly lifted from the ground and lowered into the grave The blear-eyed men gathered closer, putting the glasses to their tremulous lips and craning their necks to see the last of it Gill stood aloof till they fell back and helplessly waited again, holding their empty glasses Liggin's notes sped out louder and clearer on the desolate air, till Mrs Liggin made a sign to stop him

"I want to put this in with him," she said, coming forward "It's the best I ever made, and he did so much for us" She stooped over the grave, holding the wax flowers, reached down as far into it as possible, and dropped them The sound of the little thud, as they reached the bottom, went through Gill The four men began to throw in the earth The lawyer gave the doctor a sign, who in turn gave one to the strange guests, and straggling, shambling, and silent they followed him away through the trees, and disappeared Liggin picked up the green baize covering of his harp, his son gathered the glasses and bottles together, the woman tightened a woollen shawl across her chest, and they, too, silently set out—presumably towards the house The lawyer and Gill remained watching the men at their work

"It is to be quite flat," the former said, "and the vegetation pulled across it The mast is to be taken to another part of the wood, and left lying there" When it was all done, he turned to Gill "You will come to the house?" he asked

"No I couldn't stand it Are those men going to live there still?"

"Till the end of the week Then they are provided for elsewhere The house is to be pulled down, and the site planted over till it becomes a part of the wood"

"And then?"

"The gates are to be locked for ten years At the end of that time the fence is to be taken away, and the ground given to the parish of Cheverley for ever But no bit of it must be enclosed again The squatter, who is the ancestor of the jerry-builder, is to be chased off it, but the gipsy is to be allowed to pitch his tent if he chooses, and the tramp to find a shelter if he can"

HORACE ANNESLEY VACHELL

B 1861

## THE CHAMELEON

I MADE his acquaintance some ten years ago at the Hôtel Flaurent, Concarneau, Brittany. He introduced himself, I remember, at the *table d'hôte*, and entertained me with much lively small talk.

"My name," he said, with a delightful laugh, which disarmed formality, "is Green. Apelles Green, of California. Pray don't touch that *ordinaire*. It's rank poison. Try the cider. I'm really awfully glad to see you, and I told old Flaurent to give you a good room facing the sea, and away from the smells."

I expressed my thanks.

"Not at all. The sight of a compatriot and a brother craftsman warms the cockles of my heart. I saw Jean Baptiste snake out your easel. What? Only an amateur! So much the better. We shall not quarrel. Do I know the ropes? Well, I should smile. Flaurent swears by me. And Madame—I must introduce you to Madame—she is my *particular* friend."

I scanned him critically, but he met my glance frankly, an amused smile hovering upon his lips. His physiognomy, no less than his physique, indicated remarkable vitality. A round, brown, hairless face it was, redeemed from the commonplace by a pair of sparkling hazel eyes and a wide mouth filled with dazzling teeth. His hair, fine as silk, was auburn in colour, his small nose tip-tilted skyward, his jaw, a trifle heavy for so young a man, protruded, and his forehead was low and broad. Sitting at table, I could form no just estimate of his physical proportions, but I learned subsequently that he had posed for Cabral, the sculptor, and the admirable symmetry of his limbs had found permanent expression in a bronze Discus Thrower which had excited the enthusiastic admiration of "Tout Paris." I judged him to be some five-and-twenty years of age.

"Been here long?" I asked.

"Six months."

"Anything for the Salon?"

"Yes. A marine. Sky, sand, and sea. Figures are not my forte. I never had the patience to learn to draw really well."

We fell into art talk, and Apelles, under the influence of coffee and cigars, waxed confidential

"I wish you had come earlier," he said regretfully "I must leave Concarneau soon and look up a dealer in Paris I've half-a-dozen pot-boilers to dispose of, and it's folly selling 'em by proxy It may amuse you, but I've a queer gift of the gab I can screw fifty francs extra out of old Levy any day Not to put a fine point on it, I'm stone broke Not an obolus left! But Flaurent—God bless him—is my banker He thinks the world of me, does Flaurent Strange, isn't it?"

Soberly considering this question, I answer in the negative The personality of this gay Californian was irresistibly pleasing He had talent, which counts with the Latin race, good looks, which obtain recognition everywhere, and a twinkle in his left eye which commended itself to old and young Some Englishmen stopping at the hotel across the quay had christened him "Joyous Green" The adjective was happily chosen

"*Un bon garçon*," said Monsieur Flaurent to me, "*il va loin*"

"No," cried a black-browed student from the "Beaux Arts" "No," he repeated in broken English, snapping his powerful, spatulate fingers, "you have great wrong He is a good fellow, yes, but he will not go far He is—how do you call it—*l'eau de Seltz*?"

"Charged with gas," I suggested

"*Parfaitement*, sparkling, you say He has the gift of colour, *bien entendu*, but his drawing—*Ciel!* He has no patience, he cannot work, work, work"

None the less, during the weeks we spent together I developed an amazing friendship for "Joyous Green" He was good enough to say that my liking was returned We fished together, walked together, and painted the same models The latter, I remarked, were susceptible to magnetism Indeed, wherever we went the eyes of the maidens rested boldly or shyly, as the case might be, upon Joyous Green

But the time came—all too soon—when Apelles and I bade each other good-bye His trip to Paris could be no longer postponed Standing upon the top of the diligence, he took an affecting leave In his hand was a modest grip-sack, by his side a battered paint-box of japanned tin His trunk, his easel, a crateful of canvases, and other impediments he entrusted to the care of Madame Flaurent I can recall the scene Francine, the chambermaid, in tears, Jean Baptiste

staring stolidly at Apelles and muttering unintelligible nothings, Monsieur Flaurent gesticulating wildly, Madame waving a musk-scented pocket handkerchief and crying shrilly, "*Bon voyage ! Bon voyage !*"

Apelles descended from his perch, kissed Madame upon each red cheek, shook hands once more with Flaurent and myself—I detected tears in his eyes—and remounted

"*Je reviendras,*" he sang, in the words of a *chanson d'atelier*, "*mardi, je reviendras !*"

The stout Breton driver cracked his whip, the horses sprang into their collars, and the diligence clattered noisily down the stone-paved street

"*Un charmant jeune homme,*" murmured Monsieur Flaurent in my ear, as we re-entered the café, and I called for a couple of "bocks"  
 "*Un charmant jeune homme !*"

We sorely missed his pleasant face and cheery ways, but as the days sped by we wondered vaguely at his silence. We watched the mails, but no letter came from Apelles. He never returned to Concarneau.

His trunk was burst open in my presence, it contained a pair of sabots, a paint-stained coat, some frayed underlinen, several numbers of an art journal, and a broken revolver.

"*Ce sacre Green,*" cried mine host between his set teeth "*C'est un voleur, voyez-vous, un voleur !*"

"*Mais charmant, tout de même,*" sighed Madame

"He owes me," shouted her husband, "seven hundred and fifty francs. Do you hear that, Madame Flaurent? Seven hundred and fifty francs, for board bills and cash advanced. *Sapppppppppppristi !*"

Three springs later I had the pleasure of meeting "Joyous" at Florence. He was accurately attired in fawn-coloured cashmere cloth. A camellia adorned the silken lapel of his frock-coat. Upon his well-shaped feet were pointed, patent-leather boots, upon his head a fashionable tall hat. He had grown a small moustache, the ends of which were carefully waxed. In other respects he was unchanged.

"Why, Green," I cried, "this can't be you?"

"Hush!" he whispered, laying his hand upon my arm. "Don't yell, dear boy, and don't call me Green. I am Green no longer. My salad days are over. I am Browne, with the final 'e,' if you please. Apelles Browne."

He winked The twinkle evoked the sunniest memories I saw once more the stone *digue* at Concarneau, the green surges of the mighty Atlantic, the white-coifed maidens, the gleaming stretches of wet sand, the brown-sailed fishing-smacks

"Do you still paint?" I asked

"Paint! *pas si bête, mon vieux*. I am private secretary to Mrs. Gideon T Boal, of Philadelphia"

"Boal's axle-grease?" I ejaculated

"Yes, my boy That blessed compound has limbered me up What do you think of this, and this, and this?"

He pointed significantly to the pear-shaped pearl in his tie, the camellia, the patent-leather boots, the lemon-coloured gloves

"You never met Boal? No He was a type I ran across him at Forges-les-Eaux He was taking the cure there, but it did him no good He passed in his checks and I found myself alone with the widow Five millions, old man, and no children Think of it I had painted the portrait of the dear departed, and the widow could not speak a word of French Finally, she offered me two thousand a year as private secretary I have been with her a little over a year, and—and—" He paused I waited for the inevitable confession, but it did not come He glanced quickly at my face and concluded his sentence, "and you must dine with us this very evening"

"I am hardly in condition," I began, "to—er—"

"Come as you are," he said, eagerly "Mrs Boal is not particular Bless you, you ought to have seen old Boal He took life easy in a flannel shirt And see here, my dear chap, the world does not seem to have wagged with you as it has with me I've got more money than I know how to spend Let me—"

"Stay," I said, holding up my hand "I am not a subject for charity And, Apelles, before we pick up the strands of our friendship, you must tell me why you changed your name"

"You suspicious old crank," he replied, lightly "You look at me as if I'd robbed a train However, I'll gratify your harmless curiosity at once Let's hunt a shade-tree"

We walked down the Cascine until we found an unoccupied seat As we strolled along, I noticed that my companion frequently raised his hat in response to bows and greetings

"You know all the world and his wife," I observed

"I'm in the swim," he answered, carelessly, "but between you

and me these society people are a dull crowd But I'm awfully glad to see your picturesque old phiz again Some way you inspire confidence, and I want to unbosom myself "

We sat down presently and lighted a couple of cigars

" You have been in California ? " said Apelles, abruptly.

" Yes—many times "

" Did you ever meet the Rev Jerome White ? "

" The man who wrote *Tertullian and his Times* ? Yes "

" He was my father That astonishes you, eh ? Oh, yes, he had other children by another wife, but I was the eldest son, his Esau," he added emphatically

During our previous intercourse no bitter words had dropped from my friend's lips His greatest charm in my eyes had been an easy bonhomie, a " sweet reasonableness "—as Matthew Arnold would have it—which confronted alike good or ill-fortune with philosophical suavity

" I was a fairly good boy," continued Apelles, gloomily, " not a godly youth, of course, but straight as a string, and plastic as clay in the hands of the potter The old gentleman might have moulded me into a parson if he had gone to work the right way, but he lived, among his books, way back in the centuries, and my stepmother was a regular devil She sowed discord between us, and the governor had a hot temper Every week or so we would have a row, until the thing became monotonous One morning he dubbed me ' a son of Belial ' I told him, with a grin, not to revile himself That made him boil We had a frightful scene, and I-- I was nineteen—threatened to leave his roof ' Go,' he said, pointing to the door, ' go, and disgrace my good name ' "

" ' I don't call White a good name,' I retorted, ' and from now on I propose to discard it ' "

" I left the house with a derisive laugh on my lips and shipped aboard a sailing-ship bound to Havre, around the Horn Before we were out of Golden Gate Bay I regretted my rashness, but it was too late The second mate asked me my name ' Green,' I said He eyed me curiously ' Green, is it,' he said, not unkindly ' Well, my lad, Green is a better name than Black ' "

Apelles laughed and slapped me on the shoulder

" And that's how I filched the name of Green," he added, resuming his natural manner " But I never liked the name It smacked of

a youthful verdancy, and accordingly some two years ago I dropped it I am no longer Green, but brown I always was, and Browne, with the final 'e,' remember, I propose to remain "

" And your father ? " I asked

" When I landed at Havre I learned by chance that he was dead A little money came to me from his estate, but, like a fool, I spent it I was always, you know, *un panier percé* Then I drifted into Art, painted bon-bon boxes for a living You know all about it "

" And now," I said, slowly, " you propose to marry Mrs Boal "

" She proposes to marry me," he amended, " and why should I say her nay ? I tell you I'm not built for a poor man My appetite for all the good things of life is too large, and my morals—you see I am honest—too slim But it's easy, as dear Becky says, to be virtuous with ten thousand a year, and it must be easier still with an income of half a million I used to wonder why the deuce Boal had been permitted to accumulate his vast pile No one was the better off, not even his wife—poor woman—as long as he lived But his death emphasised the eternal fitness of things I could not hope to rake up a million dollars in a million years, but, by Jove, I can oil the wheels of a thousand lives with the proceeds of Boal's axle-grease I mean to keep the Recording Angel busy jotting down my credits in the ledger The poor little debits will soon be wiped out I daresay you thought I had treated the Flaurents scurvily So I did I intended to remit, but my marine was skied at the Salon, and the pot-boilers went for a song However, I paid the old dears in full a few months ago, and sent Madame a gold watch and chain Well, old man, I have confessed and cried *mea culpa* Is it all right ? "

" It is all right," I replied, and we shook hands

" And you will dine with us to-night at Doney's, hey ? "

" With pleasure "

I had expected to find in the person of Mrs Gideon T Boal the typical American *parvenue*—a large, loud-voiced, be-diamonded female I was agreeably surprised to meet a pretty little woman, a sugar-blonde, of genteel (I apologise for the word) bearing, with precise manners and a " prunes and prisms " voice Her chin and nose, faintly encarmined, were sharply moulded, and I learned from Apelles that she suffered from dyspepsia, and had passed her thirty-fourth birthday

During dinner " Joyous " was in high spirits, but the widow spoke

seldom She watched Apelles out of the corner of her eye, and smiled approvingly at his quips The approaching marriage was discussed, and my friend made no secret of his change of name

"First White," he said, "then Green, now Browne I am a chameleon, by Jupiter, a chameleon I take my colour from my environment White in California, white with dust, white, too, of soul, a dear little innocent Then green, green as the pleasant vineyards of France, and here in sun-baked Italy, brown Brown as the eternal hills, brown as the faces of the *contadini*!"

"I must leave you two for five minutes," he observed, carelessly, after the coffee had been brought in "I promised to meet a man at the club Be sure and take your Lacto-Peptine, Alethea" The widow's name was Alethea "Fifteen grains, my love, in half a wineglassful of water"

"He has a beautiful figure," said Mrs Boal to me, "but he is very young"

"You, too, are young," I replied, bluntly

"No, I am no longer young, I don't feel young Nobody feels young who takes Lacto-Peptine Yes, thank you—fifteen grains Ten used to be sufficient, but I had to increase the dose"

"You and Apelles intend to live in Philadelphia?"

"No People are so unkind at home They will say he married me for my money"

"He is very lucky," I murmured, "very lucky indeed"

"Mr Boal," she observed, whimsically, "considered me a fool"

At the urgent request of this queerly assorted couple I consented to remain in Florence until after the wedding, and made thereby two discoveries, to wit Mrs Boal was childishly fond of society, and, further, a devout church member, a Presbyterian of the strictest sect.

"My disposition," said Apelles to me, "is changing for the worse This simple, pastoral diet of family prayers, tea-fights, and lawn-tennis palls on my jaded palate Alethea is as good as gold You mustn't think I'm kidding, the fact is, I've not got a kick left in me But—hang it all—the thought of measuring out that Lacto-Peptine three times a day, till death do us part, does make me squirm! There—pussy's out of the bag, and I feel better already!"

"My friend," I said, severely, "have you ever heard of the Doctrine of Compensation?"



"D—— the Doctrine of Compensation I say," he whispered, "let's run up to Paris, and take in the Folies Bergères, etc."

"Are you mad?"

"Saner than you, I'll be sworn"

He pressed my arm affectionately

"One little, harmless bust," he urged, "before the final catastrophe It will do us both good We shall return rejuvenated I can invent a thousand excuses—a million, if necessary Come, let us go, my feet are aching for the asphalt We will dine at Bignon's, sup at——"

"You are not mad, Apelles," I said angrily "You are a fool!"

"You won't come with me?"

"Certainly not"

"Then I shall go alone"

"If you do that, Apelles, if you trifle with the feelings of a loving woman, I shall call you knave as well as fool Confound it, man, have you no loyalty, no gratitude?"

"Come with me," he persisted "Come with me"

"No"

"Shake hands, you old curio I was only joking"

I held out my hand reluctantly Somehow, in my obtuse fashion, I failed to appreciate the jest A strange light gleamed in my friend's eyes In his hazel eyes some imp of unrest was dancing a fantastic *pas seul*, a measure set to the music of Bohemia, those magical cadences of no time, no country, which surely wooed the fancies of Sappho, Catullus, Murger, De Musset

We walked in silence the length of the Lung' Aino, and then parted for the night Apelles sought his club, and I my lodging, near the Mercato Vecchio During the greater portion of the day following I was busily employed collating a curious Latin manuscript at the monastery of the Certosa Returning to Florence late in the afternoon, I met a young Englishman

"Your friend Apelles," he said, laughing, "had better sacrifice to the gods that pear-shaped pearl of his His luck is too good to last"

"What do you mean?"

"Mean? Why, haven't you heard? He was playing baccarat at the club last night, and won fifteen thousand francs Fortune comes to him with both hands full"

As I mounted my steep staircase I questioned the truth of this story Mrs Boal regarded all forms of gambling, even progressive

euchre for bon-bons, with Pharisaical horror Apelles cared little for card-playing He had often assured me that he disliked the winning of a friend's money, and to gratify the widow he had renounced whist Why—I asked myself—why this sudden indiscretion ?

As I unlocked the door of my modest apartment, *sous les toits*, I perceived a letter lying upon the floor I picked it up and opened it with sundry qualms

"*Jacta est alea*," it began "I leave Florence this afternoon for Paris, and ultimately Norway Indirectly *you* are responsible for this flight into Egypt Till you appeared on the scene I was satisfied with my condition I hugged my chains But the sight of your old velvetreen coat suggested forbidden fruit I began to sigh for Liberty, with a large 'L,' and that cursed phial of Lacto-Peptine, which I packed around in my vest pocket, grew heavier each day I am awfully sorry for poor Alethea, but Capo di Monte will console her He measures forty-four inches round the chest The fact is she is a saint with an infirmity of stomach, I, alas, am a sinner *Nous ne marchons pas dans le même chemin* I made a winning last night which will keep my feet out of miry places—Ever thine,

APELLES

"P S—You know my idiosyncrasy, my chameleon-like habit. You will not, therefore, be surprised to learn that I have decided to drop the name Browne It reminds me painfully of Boal You can write me, care of the American Consul, Christiania, addressing Apelles Gray. Gray is a nice, neutral name, noncommittal, in harmony with northern skies, granite cliffs, seething, swirling waters, and salmon leaping in lonely pools Think kindly of me *Vale*"

I laid the letter down with a sigh Why had this fellow twice crept into my life and out of it? What subtle chord of sympathy connected us? Why did I feel so horribly, miserably lonely? To these and other questions I could find no answer

The widow took, weeping, to her bed Ariadne, lying lonely upon the strand of Naxos, shed no more acrid tears than she, but Don Giovanni Capo di Monte ultimately consoled her She is now a principessa with three children and a triple-chin I understand that Lacto-Peptine is not to be found in the princely medicine chest, and that Her Excellency enjoys superb health She attends mass regularly, she plays poker, she rides a bicycle to reduce her flesh, and dances the cotillon! *Varium et mutabile semper femina!*

. . . . .

Seven years later I was in London, at the Westminster Aquarium. My small affairs had prospered. I was no longer out of elbows, nor out of pocket. But apart from material prosperity I had been singularly unfortunate. I had married and within eighteen months buried a young wife. I still walked the world alone, without kith or kin, a solitary man.

As I strolled idly from tank to tank, my attention was riveted upon the name "Apelles," in flaring type. Unconsciously my mind reverted to "Joyous Green." I had written to him, care of the American Consul, but the letter had been returned to me. I had also made inquiries in Berlin, Paris, New York, and London, but my friend had disappeared.

"Who is Apelles?" I asked of a saleswoman.

"The Perfect Man," she replied, promptly. "He shows three times a day. Eleven to twelve. Three to four. Nine to ten. Go and see him."

"But who is he?"

"Nobody knows. He wears a mask. They say," she added, mysteriously, "that he's no end of a toff, a West-ender, a reg'ler swell! Let me sell you his picture. Only a 'bob'."

She pushed a photograph across the counter. I glanced at it, paid for it, and retired.

It was, indeed, Apelles. The face was hidden by the mask, but the rather coarse chin and magnificent throat were not to be mistaken. I consulted my watch—half-past eight—and scribbled a line upon a card.

"Give that to Apelles," I said to one of the Aquarium servants.

"Hapelles don't see nobody," he replied. "Thank ye, sir, I'll send in the card, but 'e don't see nobody."

He returned, however, grinning.

"Yer in luck, sir. Hapelles is hamiable. 'E'll see ycr in 'is dressink-room. Please to foller me."

I was ushered into a small room behind the big stage, and there, in white tights, with a cloak thrown across his broad shoulders and a cigar between his lips, sat "Joyous Green!"

But joyous no longer. His face was redder and coarser, his eyes had lost their brilliance, the expression of his features was morose and gloomy.

"So we meet again," he cried, with a mirthless laugh. "What a world it is!"

I stared at him for the moment speechless

"Behold the Perfect Man," he continued, "and take a cigar; they're perfect, too"

They were, in fact, perfectos of the most expensive brand

"What are you doing *here*?" I asked

"Putting my muscles to a new and original abuse I make thirty pounds a week Do you earn as much?"

"No"

"I thought not Scribbling is shockingly underpaid I've kept partial track of you in the magazines and elsewhere You preserve, my friend, the illusions but not the appearance of youth Your back is bowed, your hair is thin and grey Look at me"

He flung his cloak aside and sprang, theatrically, to his feet The light from two incandescent lamps fell full upon his superb body He had grown larger, more massive, but still retained that marvellous proportion of strength and grace, that admirable combination of bone, muscle, and sinew, which had inspired the "Discus Thrower," the masterpiece of Cabral

"I see a change," I said, coldly

"Well, am I not a creature of change, a chameleon? White, Green, Browne, Gray, and now Black Let me introduce myself to you Apelles Black, Professional Poser"

"Where have you been these seven long years?"

"I spent four of them in the Southern Seas I heard the waves breaking upon the coral reefs of Tahiti I saw the palm groves of Samoa, the volcanoes of Hawaii Then I wandered through Chili and Peru Finally, I met the enterprising Spinks, and he tempted me with his gold It is he who has exploited me as the Perfect Man I must face my audience in five minutes Will you wait and see me go through my tricks?"

"No," I replied, hurriedly "Not to-night"

"Ah, the difference between the perfect man and the imperfect soul is too offensively salient Good-night, *mon cher*, come and see me to-morrow at eight"

Accordingly, at eight I presented myself, determined to make one vigorous effort to rescue this brand from the burning Apelles was awaiting me His humour had changed He appeared five years younger

"I was blue last night," he admitted, "an ugly colour I saw a



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*Horace Munshy Vachell*

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ghost It gibbered at me as I talked with you The ghost of what I might have been, eh? The *coulisses* harbour many such grisly phantoms! You evoked the spirit, but Spinks laid it with a cheque "

"Quit this cursed business," I said, with energy "Come to Paris with me and take up drawing again You are young, you have talent, the gift of colour, a trained sense of the beautiful All you need is two years under Bouguereau, two years, eight hours a day, of black and white "

"Very fine, *mon vieux*, but if I leave my dear Spinks I walk out of this a pauper "

"I have enough for two Live with me "

"You have the best heart, old fellow, the kindest in the world, but your brain is soft, too Your ideas are Utopian I am unstable as Reuben My grandmother was a Spanish Mexican, and I inherit from her a brown skin and a cursed habit of procrastination I can appreciate the better, but I choose the worse That, perhaps, is the unpardonable sin I have paved a whole section, six hundred and forty acres, in Hades with my good resolutions "

"But you can resist temptation," I said, warmly "You abandoned a cool five millions You——"

"The Lacto-Peptide did it," he interrupted, with a grimace "That and the Westminster Confession of Faith If I had gauged the true nature of that woman I might have married her The Italian has kicked the foolishness out of her, so I hear, but she would have ruled me, I suppose, with a rod of iron No, no, you must let me go to the devil in my own way, and at my own gait Perhaps," he added, slowly, "we had better not meet You are terribly upsetting, do you know it, with your cut and dried code of ethics, your sober, serious face Go your ways, *mon vieux*, and leave me to wallow in peace. We will crack one bottle for old sake's sake, and part! "

I argued with him for ten minutes, and lost my temper He rang a handbell and told the call-boy to send round some champagne

"I'll not drink with you," I cried, hotly, seizing my hat, "I despise you too much I could kick myself for wasting a thought upon you You are rotten, rotten to the core "

He listened in silence, but when I turned to leave he barred the way

"You are perfectly right," he said, coolly, "but I prefer to

call myself names I can do the subject justice, you can't!  
Good-night "

I hesitated Something in his face moved me profoundly

" I beg your pardon, Apelles You are nobody's enemy but your own I have no earthly right to reproach you Here is my address in Paris My offer to you remains open for six months As the Perfect Man I have no use for you, nor you for me, but as Apelles, the painter, I would welcome you as a brother—good-bye "

As soon as my work, a comparison of certain MSS in the library of the British Museum, was concluded, I determined to return to Paris London provoked my spleen Go where I would, the name " Apelles " stared me in the face The walls of the town were plastered with horrible advertisements The Perfect Man met me at every corner This shameful publicity angered me beyond measure " I must take some drastic medicine," I reflected, " I must see this poser before I go The sight of him, in public, will surely cure my absurd complaint "

But when I reached the Aquarium I learned, to my amazement, that Apelles had vanished None knew whither! I interviewed Mr Spinks, who foamed at the mouth with impotent rage, and denounced the Perfect Man in words which cannot be repeated

" Black! " he said, fiercely " Blackguard would be the better name "

" Does he owe you money? " I asked, coldly

" No, sir," replied the distinguished Spinks, " but he owes me *gratitood* He paid up his forfeit, all he had, I reckon, but what of it? He's fooled me out of thousands, yes, sir, thousands Why, I'd signed papers to take him to New York The women there would have gone crazy over his shape His abdominal muscles were as good as a gold mine! In a year, one year, he'd ha' become famous! "

" Infamous," I suggested

Mr Spinks stared and continued

" He's a fool, a d——d, ungrateful, senseless fool Oh Lord, oh Lord, what a fool he is! "

I returned to Paris, rejoicing. My good Babette, the wife of the concierge, greeted me effusively

" We have a new lodger," she cried, " a friend and compatriot of Monsieur."



" His name ? " I asked, idly

" *C'est drôle*," she replied, " but he has no name He told me to call him Monsieur Blanc ! "

The truth flashed upon me, and pushing Babette hastily aside, I rushed upstairs Apelles, with outstretched hands and smiling face, was standing at the door of my salon

" Yes," he said later, " I have taken you at your word I make no promises, no rash resolutions I have realised, to my shame, that I cannot stand alone, but I lean on you In my protean capacity I have rung change upon change I have travelled a weary road from White to Black Is it possible, I ask you, to retrace my steps ? "

" It is possible "

" I hope so I begin again to-morrow at Julian's For a name—even a dog must have a name—I shall adopt that of Blanc It suggests whitewash *Blanc d'Espagne* Honestly, I feel regenerate, but "—he sighed—" I know my weakness "

It is now September For eight months Apelles has worked like a horse Has he the staying qualities of that quadruped ? That is the question

MARY COLERIDGE

1861-1907

## THE KING IS DEAD, LONG LIVE THE KING

**I**T was not very quiet in the room where the king lay dying. People were coming and going, rustling in and out with hushed footsteps, whispering eagerly to each other, and where a great many people are all busy making as little noise as possible, the result is apt to be a kind of bustle that weakened nerves can scarcely endure.

But what did that matter? The doctors said he could hear nothing now. He gave no sign that he could. Surely the sobs of his beautiful young wife, as she knelt by the bedside, must else have moved him.

For days the light had been carefully shaded. Now, in the hurry, confusion, and distress, no one remembered to draw the curtains close, so that the dim eyes might not be dazzled. But what did that matter? The doctors said he could see nothing now.

For days no one but his attendants had been allowed to come near him. Now the room was free for all who chose to enter. What did it matter? The doctors said he knew no one.

So he lay for a long time, one hand flung out upon the counterpane, as if in search of something. The queen took it softly in hers, but there was no answering pressure. At length the eyes and mouth closed, and the heart ceased to beat.

"How beautiful he looks!" they whispered one to another.

When the king came to himself it was all very still—wonderfully and delightfully still, as he thought, wonderfully and delightfully dark. It was a strange, unspeakable relief to him—he lay as if in heaven. The room was full of the scent of flowers, and the cool night air came pleasantly through an open window. A row of wax tapers burned with soft radiance at the foot of the bed on which he was lying, covered with a velvet pall, only his head and face exposed. Four or five men were keeping guard around him, but they had fallen fast asleep.

So deep was the feeling of content which he experienced

that he was loth to stir Not till the great clock of the palace struck eleven did he so much as move Then he sat up with a slight laugh

He remembered how, when his mind was failing him, and he had rallied all his powers in one last passionate appeal against the injustice which was taking him away from the world just when the world most needed him, he had heard a voice saying "I will give thee yet one hour after death If, in that time, thou canst find three that desire thy life, live!"

This was his hour, his hour that he had snatched away from death How much of it had he lost already? He had been a good king, he had worked night and day for his subjects, he had nothing to fear, and he knew that it was very pleasant to live, how pleasant, he had never known before, for, to do him justice, he was not selfish, it was his unfinished work that he grieved about when the decree went forth against him Yet, as he passed out of the room where the watchers sat heavily sleeping, things were changed to him somehow The burning sense of injustice was gone Now that he came to think of it, he had done very little True that it was his utmost, but there were many better men in the world, and the world was large, very large it seemed to him now Everything had grown larger He loved his country and his home as well as ever, but in the night it had seemed as if they must perish with him, and now he knew that they were still unchanged

Outside the door he paused a moment, hesitating whither to go first Not to the queen The very thought of her grief unnerved him He would not see her till he could once more clasp her in his arms, and bid her weep tears of joy only because he was come again After all, he had but an hour to wait Before the castle clock struck twelve he would be back again in life, remembering these things only as a dream He sighed a little to think of it

"All that to do over again some day," he said, as he recalled his last moments.

Almost he turned again to the couch he had so lately left

"But I have never yet done anything through fear," said the king

And he smiled as he thought of the terms of the compact His city lay before him in the moonlight

"I could find three thousand as easily as three," he said "Are they not all my friends?"

As he passed out of the gate, he saw a child sitting on the steps, crying bitterly

"What is the matter, little one?" said the sentinel on guard, stopping a moment

"Father and mother have gone to the castle, because the king's dead," sobbed the child, "and they've never come back again, and I'm so tired and so hungry! And I've had no supper, and my doll's broken Oh! I do wish the king were alive again!"

And she burst into a fresh storm of weeping It amused the king not a little

"So this is the first of my subjects that wants me back!" he said

He had no child of his own He would have liked to try and comfort the little maiden, but there were other calls upon him just then He was on his way to the house of his great friend, the man whom he loved more than all others A kind of malicious delight possessed him, as he pictured to himself the deep dejection he should find him in

"Poor Amyas!" he said "I know what I should be feeling in his place I am glad he was not taken I could not have borne his loss"

As he entered the courtyard of his friend's house, lights were being carried to and fro, horses were being saddled, an air of bustle and excitement pervaded the place Look where he might, he could not see the face he knew so well He entered at the open door His friend was not in the hall Room after room he vainly traversed—they were all empty A sudden horror took him Surely Amyas was not dead of grief?

He came at length to a small private apartment, in which they had spent many a happy, busy hour together, but his friend was not here either, though, to judge by appearances, he could only just have left it Books and papers were tumbled all about in strange confusion, and bits of broken glass strewed the floor

A little picture was lying on the ground The king picked it up, and recognised a miniature of himself, the frame of which had been broken in the fall He let it drop again, as if it had burnt him The fire was blazing brightly, and the fragments of a half-destroyed letter lay, unconsumed as yet, in the fender It was in his own writing He snatched it up, and saw it was the last he had written, containing the details of an elaborate scheme which he had much at heart He

had only just thrown it back into the flames when two people entered the room, talking together, one a lady, the other a man, booted and spurred as though he came from a long distance

"Where is Amyas?" he asked

"Gone to proffer his services to the new king, of course," said the lady "We are, as you may think, in great anxiety He has none of the ridiculous notions of his predecessor, who, indeed, hated him cordially The very favour Amyas has hitherto enjoyed will stand in his way at the new court I only hope he may be in time to make his peace He can, with truth, say that he utterly disapproved of the foolish reforms which his late master was bent on making Of course, he was fond of him in a way, but we must think of ourselves, you know People in our position have no time for sentiment He started almost immediately after the king's death I am sending his retinue after him"

"Quite right," said the gentleman, whom the king now knew as one of his ambassadors "I shall follow him at once Between you and me, it is no bad thing for the country That poor boy had no notion of statesmanship He forced me to conclude a peace which would have been disastrous to all our best interests Happily, we shall have war directly now Promotions in the army would have been at a standstill if he had had his way"

The king did not stay to hear more

"I will go to my people," he said "They at least have no interest to make peace with my successor He will but take from them what I gave"

He heard the clock strike the first quarter as he went He was, indeed, a very remarkable king, for he knew his way to the poorest part of his dominions He had been there before, often and often, unknown to any one, and the misery which he had there beheld had stirred and steeled him to attempt what had never before been attempted

No one about the palace knew where he had caught the malignant fever which had carried him off He had a shrewd suspicion himself, and he went straight to that quarter

"Fever won't hurt me now," he said laughing The houses were as wretched, the people looked as sickly and squalid as ever They were standing about in knots in the streets, late though it was, talking together about him His name was in every mouth The

details of his illness, and the probable day of his funeral, seemed to interest them more than anything else

Five or six men were sitting drinking round a table in a disreputable-looking public-house, and he stopped to overhear their conversation

"And a good riddance, too!" said one of them, whom he knew well "What's the use of a king as never spends a farthing more than he can help? It gives no impetus to trade, it don't The new fellow's a very different sort We shall have fine doings soon "

"Aye!" struck in another, "a meddlesome, priggish sort of chap he was, always aworritting us about clean houses, and such like What right's *he* got to interfere, I'd like to know? "

"Down with all kings!" says I," put in a third, "but if we're to have 'em, let 'em behave as sich I like a young fellow as isn't afraid of his missis, and knows port wine from sherry "

"Wanted to abolish capital punishment, he did!" cried a fourth "Thought he'd get more work out of the poor fellows in prison, I suppose? Depend on it, there's some reason like that at the bottom of it We ain't so very perticular about the lives of our subjects for nothing, we ain't," an expression of opinion in which all the rest heartily concurred The clock struck again as the king turned away, he felt as if a storm of abuse from some one he had always hated would be a precious balm just then He entered the state prison, and made for the condemned cell Capital punishment was not abolished yet, and in this particular instance he had certainly felt glad of it

The cell was tenanted only by a little haggard-looking man, who was writing busily on his knee The king had only seen him once before, and he looked at him curiously

Presently the gaoler entered, and with him, the first councillor, a man whom his late master had greatly loved and esteemed The convict looked up quickly

"It was not to be till to-morrow," he said Then, as if afraid he had betrayed some cowardice, "but I am ready at any moment. May I ask you to give this paper to my wife? "

"The king is dead," said the first councillor gravely "You are reprieved His present majesty has other views. You will, in all probability, be set at large to-morrow."

"Dead?" said the man with a stunned look

"Dead!" said the first councillor, with the impressiveness of a whole board

The man stood up, passing his hand across his brow

"Sir," he said earnestly, "I respected him. For all he was a king, he treated me like a gentleman. He, too, had a young wife. Poor fellow, I wish he were alive, again!"

There were tears in the man's eyes as he spoke

The third quarter struck as the king left the prison. He felt unutterably humiliated. The pity of his foe was harder to bear than the scorn of his friends. He would rather have died a thousand deaths than owe his life to such a man. And yet, because he was himself noble, he could not but rejoice to find nobility in another. He said to himself sternly that it was not worth what he had gone through. He reviewed his position in no very self-complacent mood. The affection he had so confidently relied upon was but a dream. The people he was fain to work for were not ripe for their own improvement. A foolish little child, a generous enemy, these were his only friends. After all, was it worth while to live? Had he not better get back quietly and submit, making no further effort? He had learnt his lesson, he could "lie down in peace, and sleep, and take his rest." The eternal powers had justified themselves. What matter though every man had proved a liar? The bitterness had passed away, and he seemed to see clearly.

Thick clouds had gathered over the moon, and the cold struck through him. All at once a sense of loneliness that cannot be described rushed over him, and his heart sank. Was there really no one who cared—no one? He would have given anything at that moment for a look, a single word of real sympathy. He longed with sick longing for the assurance of love.

There were yet a few moments left. How had he borne to wait so long? This, at least, he was sure of, and this was all the world to him. He began to find comfort and consolation in the thought, he forgave—indeed he almost forgot—the rest. Yet he had fallen very low, for, as he stood at the door of his wife's room, he hesitated whether to go in. What if this, too, were an illusion? Had he not best go back before he knew?

"But I have never yet done anything through fear," said the king

His wife was sitting by the fire alone, her face hidden, her long hair falling round her like a veil At the first sight of her, a pang of self-reproach shot through him How could he ever have doubted ?

She was wearing a ring that he had given her—a ring she wore always, and the light sparkled and flashed from the jewel Except for this, there was nothing bright in the room

He ardently desired to comfort her He wondered why all her ladies had left her Surely one might have stayed with her on this first night of her bereavement ? She seemed to be lost in thought If she would only speak, or call his name ! But she was quite silent

A slight noise made the king start A secret door in the wall opened, the existence of which he had thought was known only to himself and his queen, and a man stood before her

She put her finger to her lips, as though to counsel silence, and then threw herself into his arms

“ You have come,” she said—“ Oh, I am so glad ! I had to hold his hand when he was dying I was frightened sitting here by myself I thought his ghost would come back, but he will never come back any more We may be happy always now,” and drawing the ring from her finger, she kissed it, weeping, and gave it to him

When midnight struck, the watchers wakened with a start, to find the king lying stark and stiff, as before, but a great change had come over his countenance

“ We must not let the queen see him again,” they said.



BART KENNEDY

B 1861

## THE KING'S LAST SAILING

**T**HE body of Smerd was sent forth in the blazing ship, and the wind swelled out the great sail that stood high up across the mast, as yet ungrasped by the fire. Water, wind, and flame surrounded the enshrouded king who had led his vikings to the battle and the spoiling across unknown heaving seas into strange lands. No more would come from Smerd the shout of the full throat as he led to the fight his wild, hard men. No more would his axe flash in the swing of death. For Smerd lay still.

It had come to pass that he had gone the way that all go. He had died as should die a Norse king—this hard, implacable, slaying Smerd! But a strange softness was in his face as he lay in the peace of death on the bale. Over his body the scald had chanted his deeds of glory. He had sung of the slaying of Or, whose might was as the might of a he-t—Or, who had fallen before the death-swing of the axe of Smerd! And the song of the scald had told of the sacking of burgs, and the burnings. And through the song the king had lain with the calm of death on his face, his axe and spear and sword lying in stillness by him. And the sacred, hallowed rites of the dead had followed the song. And the wise women had muttered the magic runes. He had gone the way of the brave!

A blazing, wind-driven ship was bearing him now to his last end. The glow of the fire sank into the waters and rose up, filling the air. And the glow lit up the face of Smerd as he lay.

From the vikings standing on the shore there came a mighty shout. They could see from afar the face of the king as the glow dwelt upon it.

"It is well with him in Valhalla!" cried Thorold, the scald of the keen eyes—the wise one. "It is well with Smerd. He smiles! He smiles in the glow of the flame!"

A murmur went around and a wise woman made a sign.

"'Tis as the sea-rune said," she muttered.

"It is then the omen," said Thronn of the heavy sword to Thorold.

"It is," cried Thorold again, his voice swelling out into a chant.

"The sign has come Odin has welcomed Smerd Even now is the going of the feast in Valhalla The gods rise in the great hall to quaff their cups to the hero And the smile is on the face of the dead yonder as it goes out into the vastness The smile in the glow of the fire It is the sign It is the sign! It is well Go forth, O body of Smerd, to the wind, the water, the flame, the fire Mingle thou and be lost Meet thou the redness of the fire and the sweep and hurl of the wind Meet thou the waters, Smerd Thou handler of the crushing axe! Thou slayer of Lan! Thou hero whose soul the gods have acclaimed in Valhalla! Go forth, O king, in the blaze!"

Again the wise woman made a sign

"'Tis as the rune goes that Hild stitched in his shroud," she said to herself "And told I her the meaning of it, and the mystery of it Hild who is gone—who loved Smerd Hild who is gone!"

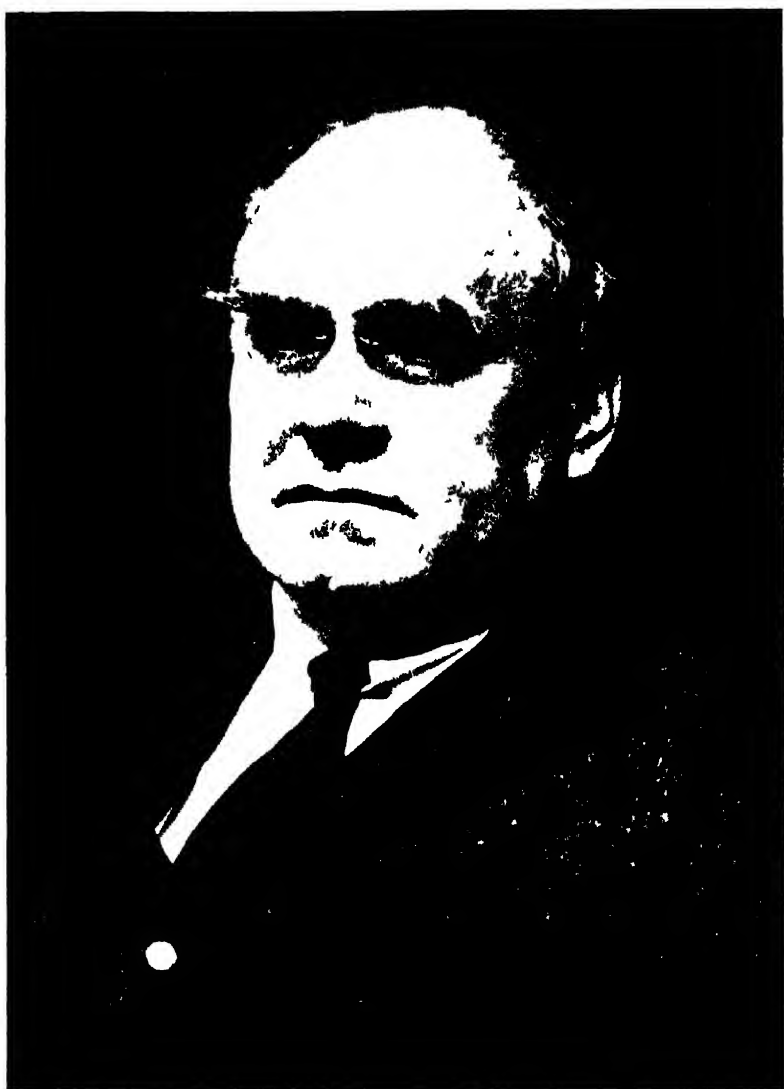
The vikings were again shouting mightily The sign had come! They stood around Thorold, the scald of the keen eyes—the wise one Long-haired, blue-eyed, great-limbed men clad in skins Wild-faced sons of the sea and the battle and the storm They held aloft their swords and axes and spears, and clashed them together as they shouted No more would their king lead them to the fight and the spoiling and the carouse No more would they follow him to the sacking and the burning No more would they see him striding in their front, whirling his axe He was gone But his going was the going of a hero He had fallen fighting—as a Norse king should fall How his axe had crashed and split and hewed! Around him had lain in heaps the men that had died from the smite of him! And then they had borne him away, and carried him hither, and sent his body on the ship yonder to its last end!

The vikings shouted and shouted Odin had welcomed Smerd! And even now the gods were acclaiming him in the feast in the great hall The sign had come He had smiled as he lay in the glow of the flame

At last they were silent They were standing and watching the flames from the ship as it was bearing swiftly out under the press of the great sail

"The fire touches not the sail," said Flann of the red hair to Thronn "And sails she as though Korl of the helm had her in his grasp She goes her way straight as a sword"

"It is so!" exclaimed Thronn.



H. H. H.

Baethorned



"It is so!" echoed the vikings wonderingly

"Why is this?" asked Flann of Thorold, who was standing near.

Thorold bent down and shaded his eyes with his hand as he looked out across the water to the swift-going ship, which now was far off. The vikings looked at him questioningly. Thorold had the deep knowledge! He knew the meaning of things!

The wise woman who had made the sign was gone

"The wind blows the fire away to the side of the sail," said Thorold, at last, "and the helm seems to be still—as if it were held."

"It is strange that the helm should be still," said Flann. "Where is Godrul, the wise woman who made the sign of the hand? Look!"

The ship had suddenly turned from its straight course, and the great sail flapped and shook, and was for an instant still. For a moment the blaze of the fire seemed to die away.

And the bow of the ship swung slowly round.

Thorold was still bent down, watching—his hand shading his eyes. A deep silence was upon all.

Round and round came the ship. And there crept into the face of Thorold a look that no one could understand. He bent lower still—and then all at once he rose up, his face working with wonder.

"By Od and all the gods!" he shouted. "Smerd has risen, and is himself steering the ship!"

The vikings suddenly thronged and crushed round him.

"Smerd——"

"Smerd has risen?"

"By the Hammer——"

"——has risen?"

"Smerd is——"

"He is standing even now beside the helm," shouted Thorold again. "He is pulling it over. Canst thou not see him, Flann? Look, Thronn, look! Canst thou not see him? Look, ye vikings! Where is Godrul, the wise woman who made the sign?"

"She is gone," said Flann. "But Smerd is dead!"

"No!" exclaimed Thorold. "He has risen!" He pointed out to the ship. "He pulls over the helm slowly. He is weak. The sign in the glow of the fire was no sign. Smerd has risen! Let us out to him! Out to him, vikings!"

The vikings looked out in amaze across the waters. Something clad in white was pulling over the helm. They could faintly see it in

the distance And the ship swung back again to its course The great sail filled and swelled out

And the flame of the fire again rose

The figure could not be seen as the ship bore along to the open It was hid from view by the width of the high stern that arched back

And now around the swift-moving ship was an immense, blood-coloured half-circle of light

The wind was growing and the sky was beginning to darken, and foam was coming on the crests of the waves The sea-birds were flying into the land A storm was at hand

"But surely was Smerd dead!" cried Flann to Thorold "I came up as he lay And after I saw his wounds His breast was pierced through, and the heart of him was rent I saw him with the life gone from him He was dead!"

"He is there, then," said Thorold, pointing "I saw him living He is there, steering the ship I saw him as the sail fell out of the wind And ye whose eyes are not my eyes saw something white at the helm Let us out to him!"

The vikings rushed to get a ship that was lying near into readiness to go out after the blazing ship that held Smerd, their king The sign that had come to them was no sign! He would lead them out again to the battle and the spoiling Again they would follow him, to sack and burn and slay Smerd lived Again they would see his axe whirling and gleaming Smerd lived! He was out in the ship yonder

"Think you that Smerd lives?" asked Flann of Swart of the flinging hammer, as they hauled strongly on a rope together

"Surely!" said Swart "Thorold, the scald of the keen eyes, saw him And saw I something white that moved What think you, Flann?"

"By Odin, I know not," said Flann "But I saw with my eyes the rent in the breast of him as he lay The heart of him was split He was dead By Odin he was dead, as I am alive now!"

"Mayhap there's a spell in it," said Swart "But he lives, surely Thorold saw him"

"I clove the skull of the one that stood near him as he lay!" cried Flann "Smerd was dead, and steers he now the ship of the blaze. He lives But I saw him dead"

"There's the wonder in it," said Ol of the strong arm "But Smerd lives!"

They had the ship all but ready They were about to push her out from the shore

"Ho! Thorold!" called out Flann suddenly "Why does Smerd go out from us? Why does he not turn the ship?"

All paused, and looked at Thorold, the wise one It was strange to the vikings that Smerd should go out from them! Why did he not turn the ship, as said Flann?

Thorold turned, and looked at the ship

"He bids us to follow him," he said "He has the meaning for it"

"It may be," said a voice behind them "But go ye not out"

It was Godrul, the wise woman, who had made the sign

"But I saw him!" cried Thorold

"Go ye not out," said Godrul "Let the body of Smerd go to its end Saw ye not the sign? Go ye not" And she turned and left the vikings

"But we saw him alive!" said Thionn

"He is dead," said Flann "Let us not go out An evil spell is being woven"

Thorold knew not what to think But he had surely seen Smerd at the helm There was some deep mystery in it How he could fathom it he knew not It was a strange happening

"Let us not go," said Flann

"No!" cried Thorold "Let us go! Let us heed not Godrul. Come! Why fear we an evil spell? Let us out to our king!"

And at his words the vikings shook out the sail of the ship they had got into readiness, and in a moment she was cutting through the waves that were now roughening up with the wind that was rising strong For a while they helped her speed with strokes from the long heavy oars But soon the oars were shipped inboard, for the strong breeze broke suddenly into a gale And the sky grew darker, and the swell of the waters rose mightily, and waves flew and dashed over the ship as she swirled along The wind now roared and swept, and the mast strained and groaned, but Korl of the helm held the ship full sail to the wind

They were gaining on the ship of the blaze!

"The ship goes wildly now," cried Thorold, as he watched "I see no one at the helm. And the sail is grasped by the fire and blazes full."

Nearer and nearer came the vikings through the wildness and stress of the storm

"By the Hammer of Thor!" shouted Thorold, from the bow of the ship "Smerd is dead! He sleeps his last sleep I see the stillness of his face through the flames But the riddle is read"

"And how is it read?" asked Flann, who stood near

"Hild, who loved him, is with him! Hild whom he took from the lord of the Far Island when he slew him"

"How got she in the ship?" cried Thronn and Ol and the vikings who had heard the words of Thorold

"I know not," said Thorold, in answer, "but she lies there with her arms round the body of Smerd The sign we were given was a true sign Hild steered the ship out from us She lies there, yonder I saw her as the wind drove back the flame"

The cry of a woman came through the storm

"It is her voice!" shouted Flann, "the voice of Hild Let us get to the ship!"

But they heard no more the voice through the storm

At last they were near to the ship But the end was upon it They could see but a mass of redness and flame, they could hear but the roar of the wind and the roar of the fire

"It is the end," said Flann

And suddenly the ship broke and sank—the ship that had borne out Hild and the body of Smerd



SARAH GRAND

B 1862

## WHEN THE DOOR OPENED——?

**W**HAT curious glimpses of life one catches sometimes unawares, scenes that flash forth distinctly from the tangled mass of movement, the crowded details, the inextricable confusion of human affairs as they appear to the looker-on in a great city. Seen amidst all the turmoil, from a hansom cab, from the top of an omnibus, from the platform of an underground station in a train that stops for a minute, from the pavement in a carriage blocked in by the stream of traffic, by day and night, from out of the routine, the commonplace doings of people in the commonplace moods and phases which weave themselves into the web of wholesome lives, they stand out to view, these intervals of intensity, the beginnings of episodes—tragic, heroic, amorous, abject, or the conclusions which mark the turning-point, the crisis of a life. If it be the beginning, how one aches to know what the end will be, and if it be the end, what would one not give for the first part! Yet, tantalising as these fragments are, they possess a charm which is not in the finished story, and are recollected with vivid interest long after many a tale, begun at the beginning and rounded to a satisfactory conclusion, has lapsed from the mind like a thing that is done with and forgotten.

For instance. I was coming home alone late one night by train from a distant suburb, and happened to get into a carriage with three other people. One of them was a man about forty, with dark hair going grey, and a pleasant, clear-cut, well-disciplined face. The other two were husband and wife, the husband being a good deal older than the wife. There seemed to have been some disagreement between the pair before I got into the carriage, for the lady looked sulky and dejected, while the gentleman was a good deal ruffled. He spoke a word or two to the other passenger, however, in a way which showed that they were acquainted, and also, as it seemed to me, for the purpose of keeping up appearances. The lady, on the contrary, made no attempt to disguise her feelings, but sat silent and rigid, staring into the dark-

ness, until the train stopped, when her husband grimly handed her out, and I was left alone with the third passenger

We watched the pair walk off together, and it was obvious that the quarrel recommenced before they had taken many steps. My solitary fellow-passenger sat opposite to me, and when the two had passed out of sight, our eyes met in an involuntary glance of intelligence, and he shrugged his shoulders slightly

"I should like to give that pair a piece of advice," slipped from me unawares

"Ah!" he said, sighing, "so should I, but it is an impossible thing to do in such cases"

"I suppose you are thinking that people know their own business best," I rejoined

"No, I am not," he answered. "The lookers-on see most of the game, you know. But, nevertheless, it is worse than useless to offer advice to a married pair—especially when they are both wrong-headed," he added. "But even right-headed people, with the best intentions, make terrible mistakes, and in their own cases, too, when they might be expected to know what they are about. Now, that man who was here just now watches his wife and keeps her shut up, or only allows her out under escort, as if he thought that she would certainly misconduct herself if ever she had an opportunity. The consequence is, she is growing to dislike and despise him, and he may drive her in the end to do the very thing he dreads and is guarding against. I cannot understand how a man can care to have a bond-slave, always under orders, for a wife. Personally, I prefer a free woman, and I should be sorry to think that liberty means licence in any but exceptional cases"

"But there, it seems to me, that a difficulty arises," I observed. "How is a man to tell which will prove an exceptional case?"

"Oh, I should think there is no difficulty about that," he answered. "Girls give indication of character early enough. And, at any rate, if they are not trustworthy, dogging them about won't make them so. I don't say, however, that a young and thoughtless girl should be cast entirely upon her own resources, only what she wants is a companion, not a keeper. However, as I said just now, the right ordering of married lives is a matter in which even the best-intentioned people may make mistakes. I married a girl somewhat younger than myself—about ten years—not that I think that makes any difference if

people agree in their tastes. It so happened, however, that we did not agree. I am fond of a quiet life, with full leisure for art and literature, and dislike nothing so much as killing time in idle chatter at entertainments where one is not entertained. My wife, on the contrary, as I found out very soon after we were married, is positively bored by books and pictures, and is never so happy as when she is in the full whirl of the social maelstrom. Well, I thought the matter out, and the justice of the case seemed to me to demand that she should not require me to go into Society, and that I should not require her to stay at home. We were fond of each other, but I could not see why, on that account, either of us should have our life spoilt by being made to conform to the uncongenial tastes and habits of the other. Marriage must be a perfect institution when there is entire similarity of interests, but if there is not, I cannot see why people should be miserable. There is time enough for each of the pair to occupy themselves in their own way during the twenty-four hours, and meet often enough to be happy together as well. In fact, I don't know that it isn't the only chance of happiness in such a case for them to order their lives in that way. They keep in touch better by drifting apart and meeting again with minds refreshed and something to say to each other. So I let my wife go her way and I went mine, and the plan seemed to be answering capitally. There were times when she would have liked me to go out with her, and there were times when I should have been glad if she had stayed at home with me, and occasionally we conformed to one another's secret wishes in these respects, but I cannot say that the self-sacrifice was much of a success. There was one fancy-dress ball—a public affair—that she particularly wanted to go to, and I thought she half hinted that I should accompany her, if so, I did not take the hint, because I knew I should be bored.

"She went to that ball rather conspicuously well dressed in a silver-grey domino, lined with pale pink, and trimmed with white lace. Her fan was white ostrich feathers, and her mask was fringed with lace, which concealed her mouth. She had been quite excited about going, but when it came to the point, she didn't seem to be so very eager, after all. She was to be met by some friends at the ball. I said I would sit up for her, and she promised not to be late.

"After she had gone, I felt depressed somehow. I got a book and a cigar, but did not find either of them in the least absorbing.

My mind wandered when I tried to read, and I had to give it up at last, and just settled myself to smoke and think things out

"I began to wonder what my wife was doing at the ball, and if she had found her friends all right. Then it occurred to me that it would be very awkward if they did not meet by some mistake. All kinds of people go to these public balls, and manners are apt to be free-and-easy when masks are worn. My wife, even in her domino, gave the impression of youth and good looks. She might be subjected to some annoyance from the bounders who haunt such places. At that minute she might be dancing with some very undesirable partner. Had I done right to let her go alone? I threw my cigar into the fireplace and got up, but without any distinct idea. In fact, I stood for a little, as one does sometimes in a difficulty, with all thought suspended. Then I recollected a fancy dress I had had for a ball I went to before I met my wife. It was the black velvet costume of a Spanish Don of the period of Philip IV, the Velasquez period, a handsome dress copied from a picture, and well made. I had liked myself in it when I wore it, and I wondered what I had done with it—if it were among the costumes I used to paint from. I went to my studio, and there I found it in an old chest, and the mask I had worn along with it.

"It was still early in the night, why not dress and go to the ball also? My wife had taken the carriage, but there were some livery stables near, and I could easily get a brougham. I rang for my man, and sent him to fetch me one.

"The ball was in full swing when I arrived, but by great good luck almost the first person I saw was my wife. The silver-grey, pale pink, white lace and white ostrich-feather fan made an easily-distinguished costume, and I recognised her at once, and made my way through the crowd towards her. But as I approached, I realised that she could not possibly recognise me. She had never seen me in that dress, she probably didn't even know that I had it, yet, although I was walking straight up to her, and she saw that I was, she made no sign of objecting. Was it possible that she would let a strange man speak to her, and even encourage him to do so by her attitude? The horrible doubt shot such a pang through my heart that I determined to set it at rest for ever by making the experiment. Without waiting to ask myself whether it was a fair or an unfair thing to do, I addressed her in a feigned voice, familiarly

“ ‘I fancy that you are waiting for me,’ I said ‘Please say that you are’

“ ‘Well, I am waiting for something exciting to happen,’ she answered, also disguising her voice, and speaking with the easy assurance of one who is accustomed to such encounters, ‘for standing here alone is not lively’

“ For a moment the tawdry splendour of the scene was blotted out I could neither see nor hear I recovered myself, however, just as the band struck up, and asked her mechanically if I might have the pleasure of a dance

“ ‘I shall be delighted,’ she replied, taking my arm at once, and leading me, rather than waiting to be led, through the motley crew about us to the ball-room, in a free-and-easy way that filled me with consternation In her right mind, she had always seemed to be reserved with strangers, and I should never have imagined that a mask would have made such a difference

“ She danced with the abandonment of a ballet-girl, and when the music ceased, she asked me for ice and liqueur, and showed me the way to the refreshment room When she had had all she wanted, and it was a good deal, she took my arm again, and we began to walk about She seemed to know all the ins and outs of the place, which surprised me, for I didn’t suppose she had ever been there before I asked her, however

“ ‘Have I ever been here before!’ she ejaculated ‘I should just think so! I come whenever I can’

“ ‘Do you tell your husband?’ I ventured.

“ ‘Oh, my husband!’ she exclaimed ‘But who told you that I had a husband, by the way?’

“ ‘I feel sure that a lady of your personal attractions and charms of manner cannot fail to have a husband,’ I answered

“ ‘Ah, courtier,’ she said ‘Heigho! What a difference there is between husbands and lovers! Aren’t women fools to marry if they can make love for a livelihood?’

“ She clasped her hands around my arm as she spoke, and looked up into my face alluringly Was this the true woman, I wondered, and was that other to whom I was accustomed only an actress earning her living? No, I could not believe it I argued with myself that the manner and sentiments were assumed with the dress, that they were part of the masquerade But she could not have done it so well

without much experience, and she confessed that she came here often, which argued deceit, for I had never had a hint of it. Indeed, the reason she gave me for going that night was that she had never been to a mask ball. Oh, thrice accursed fool that I was to let her come alone! Yet perhaps it was just as well. I knew that she was frivolous, but had never suspected that she was fast. Indeed, I would have wagered my soul that she was to be trusted anywhere. She had taken me in finely, and it was just as well that I should know it. Doubtless my friends had known it all along, and pitied me for a blind, weak fool. But it was a shock, I can tell you, and I was in two minds the whole time. In the one I condemned her utterly, in the other I was trying to excuse her. Appearances were all against her certainly, but the habit of love and respect is not to be changed in a moment. And, after all, what had she done that could not be excused? She had talked in a vulgar way certainly, but I had not presumed upon it. If I had taken the slightest liberty, doubtless she would have resented it promptly. Would she?

"Her hand was resting on my arm. I hesitated a moment, then I took it and pressed it. To my horror, she laughed and returned the pressure.

" 'You are waking up, Don Sombre,' she said. 'I was beginning to fear that you were one of the doomed-to-the-dumps, you were so cold and dull. But the dumps don't last long when I'm about. I'll soon cheer you up, and put some life in you.'

"I felt a horrid emotion at these words, and it was some time before I could master my voice. I was a broken man, and longed to sit down and cry like a child. It was sorrow that had come upon me, not anger. One is not angry when there is no hope, one is crushed. And yet, although I knew there was no hope, I was like a gambler who must stake again. I determined to go a little further just to give her a last chance.

" 'You have cheered me to such good purpose that I do not feel inclined to part with you,' I said, 'but this crowd is distracting. Let us get out of it. I have a carriage waiting, will you come home with me?'

" 'Why, he's quite nervous,' she said, laughing. 'Now that is nice, for I could swear, Don Sombre, that you're not accustomed to "no" from a lady.'

" 'Why is it nice?' I asked.

“ ‘ Well, you wouldn’t be nervous if you were indifferent, you know,’ she said archly ‘ I can’t stand your cold-blooded creatures, who don’t care a button either way ’

“ ‘ Then I ought to please you,’ I answered grimly , ‘ for, as you rightly perceive, I do care greatly Will you come ? ’

“ She laughed again Good heavens ! Was that acquiescence ? I drew her towards the main entrance with the impetuosity of a young lover, and she did not demur She remarked that I seemed to be impatient, and impatient I was Every moment was an hour of pain now until the ghastly farce was over But I could not end it there and then It was too serious I must get her home I went down the street myself to fetch my hired brougham, so that my name might not be called out, and I told the man to go back before I returned to hand her in I was afraid of a scene in that public place if she suddenly discovered who I was, and it seemed an interminable time until we started We were clear of the crowd, and off at last, however, but for the first few minutes I sat beside her unable to utter a word, and she began to rally me again on the subject of my gloom Then she fell up against me, but whether because the carriage lurched or out of mere wantonness, I could not tell However, I put my arm round her and she did not object

“ ‘ Where do you live ? ’ she asked, as we neared the house ‘ These streets are all alike, and I cannot tell in the least where I am ’

“ ‘ Well, we are there, at any rate,’ I answered, as the carriage stopped I handed her out, and opened the door with my latch-key The light was so low in the hall, I had to take her hand to lead her up to the drawing-room There all was darkness, but I had matches in my pocket, and lit the gas Then I turned to her She was giggling at something, but did not seem to see where she was

“ ‘ Now, madam,’ I said sternly, ‘ we will unmask ’

“ In a moment she had taken hers off and slipped out of the domino

“ I gazed I gasped I fell into a chair For the woman before me was a perfect stranger—a creature with dyed hair, blackened eyelids, and painted cheeks—not the sort of person to be seen with anywhere if one valued one’s reputation , and yet I could have gone down on my knees and kissed the hem of her garment, so great was my relief I shall never forget it ! For the first few minutes I could think of nothing, do nothing, but just sit there gazing at her, and smiling idiotically She was flattered by my attitude, which she

mistook for speechless admiration, and she stood still, posing in a theatrical manner, with an affectation of coyness, until I recovered myself

" My first clear idea was that I must get rid of her , but how to do it without offering her any indignity ? I was casting about in my mind for a plausible excuse , but before anything occurred to me, a carriage stopped at the door below I heard a key turned in the lock, then the rustle of silk, and a light step on the staircase My wife had returned early as she had promised, and was coming straight up to the drawing-room Her hand was already on the handle of the door——"

He broke off at this point and looked out of the window The train had stopped, but we had not noticed it at the moment

" Hello ! " he exclaimed, " this is my station ! " and out he jumped, just as we were moving off again

I have never seen him since , I do not suppose that I ever shall , so I expect that all my life long I shall be tormented with conjectures as to what happened when the door opened.





Ru 11

Sarahpoud



## THE STORY OF A PIEBALD HORSE

**T**HIS is all about a piebald. People there are like birds that come down in flocks, hop about chattering, gobble up their seed, then fly away, forgetting what they have swallowed. I love not to scatter grain for such as these. With you, friend, it is different. Others may laugh if they like at the old man of many stories, who puts all things into his copper memory. I can laugh, too, knowing that all things are ordered by destiny, otherwise I might sit down and cry.

The things I have seen! There was the piebald that died long ago, I could take you to the very spot where his bones used to lie bleaching in the sun. There is a nettle growing on the spot. I saw it yesterday. What important things are these to remember and talk about! Bones of a dead horse and a nettle, a young bird that falls from its nest in the night and is found dead in the morning, puffballs blown about by the wind, a little lamb left behind by the flock bleating at night amongst the thorns and thistles, where only the fox or wild dog can hear it! Small matters are these, and our lives, what are they? And the people we have known, the men and women who have spoken to us and touched us with warm hands—the bright eyes and red lips! Can we cast these things like dead leaves on the fire? Can we lie down full of heaviness because of them, and sleep and rise in the morning without them? Ah, friend!

Let us to the story of the piebald. There was a cattle-marking at neighbour Sotelo's estancia, and out of a herd of three thousand head we had to part all the yearlings to be branded. After that, dinner and a dance. At sunrise we gathered, about thirty of us, all friends and neighbours, to do the work. Only with us came one person nobody knew. He joined us when we were on our way to the cattle, a young man, slender, well-formed, of pleasing countenance and dressed as few could dress in those days. His horse also shone with silver trappings. And what an animal! Many horses have I seen in this life, but never one with such a presence as this young stranger's piebald.

Arrived at the herd, we began to separate the young animals, the men riding in couples through the cattle, so that each calf when singled out could be driven by two horsemen, one on each side, to prevent it from doubling back. I happened to be mounted on a demon with a fiery mouth—there was no making him work, so I had to leave the parters and stand with little to do, watching the yearlings already parted, to keep them from returning to the herd.

Presently neighbour Chapaco rode up to me. He was a good-hearted man, well-spoken, half Indian and half Christian, but he also had another half, and that was devil.

"What! neighbour Lucero, are you riding on a donkey or a goat, that you remain here doing boy's work?"

I began telling him about my horse, but he did not listen, he was looking at the parters.

"Who is that young stranger?" he asked.

"I see him to-day," I replied, "and if I see him again to-morrow, then I shall have seen him twice."

"And in what country of which I have never heard did he learn cattle-parting?" said he.

"He rides," I answered, "like one presuming on a good horse. But he is safe, his fellow-worker has all the danger."

"I believe you," said Chapaco. "He charges furiously and hurls the heifer before his comrade, who has all the work to keep it from doubling, and all the danger, for at any moment his horse may go over it and fall. Thus our young stranger does knowingly, thinking that no one here will resent it. No, Lucero, he is presuming more on his long knife than on his good horse."

Even while he spoke, the two we were watching rode up to us. Chapaco saluted the young man, taking off his hat, and said—"Will you take me for a partner, friend?"

"Yes, why not, friend?" returned the other, and together the two rode back to the herd.

Now I shall watch them, said I to myself, to see what this Indian devil intends doing. Soon they came out of the herd driving a very small animal. Then I knew what was coming. "May your guardian angel be with you to avert a calamity, young stranger!" I exclaimed. Whip and spur those two came towards me like men riding a race and not parting cattle. Chapaco kept close to the calf, so that he had the advantage, for his horse was well trained. At length he got a little

ahead, then, quick as lightning, he forced the calf round square before the other. The piebald struck it full in the middle, and fell because it had to fall. But Saints in Heaven! why did not the rider save himself? Those who were watching saw him throw up his feet to tread his horse's neck and leap away, nevertheless man, horse, and calf came down together. They ploughed the ground for some distance, so great had been their speed, and the man was under. When we picked him up he was senseless, the blood flowing from his mouth. Next morning, when the sun rose and God's light fell on the earth, he expired.

Of course there was no dancing that night. Some of the people, after eating, went away, others remained sitting about all night, talking in low tones, waiting for the end. A few of us were at his bedside watching his white face and closed eyes. He breathed, and that was all. When the sunlight came over the world he opened his eyes, and Sotelo asked him how he did. He took no notice, but presently his lips began to move, though they seemed to utter no sound. Sotelo bent his ear down to listen. "Where does she live?" he asked. He could not answer—he was dead.

"He seemed to be saying many things," Sotelo told us, "but I understood only this—'Tell her to forgive me. I was wrong. She loved him from the first. I was jealous, and hated him. Tell Elaria not to grieve—Anacleto will be good to her.' Alas! my friends, where shall I find his relations to deliver this dying message to them?"

The Alcalde came that day and made a list of the dead man's possessions, and bade Sotelo take charge of them till the relations could be found. Then, calling all the people together, he bade each person cut on his whip-handle and on the sheath of his knife the mark branded on the flank of the piebald, which was in shape like a horse-shoe with a cross inside, so that it might be shown to all strangers, and made known through the country until the dead man's relations should hear of it.

When a year had gone by, the Alcalde told Sotelo that, all inquiries having failed, he could now take the piebald and the silver trappings for himself. Sotelo would not listen to this, for he was a devout man and coveted no person's property, dead or alive. The horse and things, however, still remained in his charge.

Three years later I was one afternoon sitting with Sotelo, taking maté, when his herd of dun mares were driven up. They came gallop-

ing and neighing to the corral, and ahead of them, looking like a wild horse, was the piebald, for no person ever mounted him

"Never do I look on that horse," I remarked, "without remembering the fatal marking, when its master met his death"

"Now you speak of it," said he, "let me inform you that I am about to try a new plan That noble piebald and all those silver trappings hanging in my room are always reproaching my conscience Let us not forget the young stranger we put under ground I have had many masses said for his soul's repose, but that does not quite satisfy me Somewhere there is a place where he is not forgotten Hands there are, perhaps, that gather wild flowers to place them with lighted candles before the image of the Blessed Virgin, eyes there are that weep and watch for his coming You know how many travellers and cattle-drovers going to Buenos Ayres from the south call for refreshment at the *pulperia* I intend taking the piebald and tying him every day at the gate there No person calling will fail to notice the horse, and some day perhaps some traveller will recognise the brand on its flank and will be able to tell us what department and what estancia it comes from"

I did not believe anything would result from this, but said nothing, not wishing to discourage him

Next morning the piebald was tied up at the gate of the *pulperia*, at the roadside, only to be released again when night came, and this was repeated every day for a long time So fine an animal did not fail to attract the attention of all strangers passing that way, still several weeks went by and nothing was discovered At length, one evening, just when the sun was setting, there appeared a troop of cattle driven by eight men It had come a great distance, for the troop was a large one—about nine hundred head—and they moved slowly, like cattle that had been many days on the road Some of the men came in for refreshments, then the store-keeper noticed that one remained outside leaning on the gate

"What is the capatas doing that he remains outside?" said one of the men

"Evidently he has fallen in love with that piebald," said another, "for he cannot take his eyes off it"

At length the capatas, a young man of good presence, came in and sat down on a bench The others were talking and laughing about the strange things they had all been doing the day before, for they had been many days and nights on the road, only nodding a little in their

saddles, and at length becoming delirious from want of sleep, they had begun to act like men that are half-crazed

"Enough of the delusions of yesterday," said the capatas, who had been silently listening to them, "but tell me, boys, am I in the same condition to-day?"

"Surely not!" they replied "Thanks to those horned devils being so tired and footsore, we all had some sleep last night"

"Very well, then," said he, "now you have finished eating and drinking, go back to the troop, but before you leave look well at that piebald tied at the gate He that is not a cattle-drover may ask, 'How can my eyes deceive me?' but I know that a crazy brain makes us see many strange things when the drowsy eyes can only be held open with the fingers"

The men did as they were told, and when they had looked well at the piebald, they all shouted out, "He has the brand of the estancia de Silva on his flank, and no counter-brand—claim the horse, capatas, for he is yours" And after that they rode away to the herd

"My friend," said the capatas to the store-keeper, "will you explain how you came possessed of this piebald horse?"

Then the other told him everything, even the dying words of the young stranger, for he knew all

The capatas bent down his head, and covering his face shed tears Then he said, "And you died thus, Torcuato, amongst strangers! From my heart I have forgiven you the wrong you did me Heaven rest your soul, Torcuato, I cannot forget that we were once brothers I, friend, am that Anacleto of whom he spoke with his last breath"

Sotelo was then sent for, and when he arrived and the *pulperia* was closed for the night, the capatas told his story, which I will give you in his own words, for I was also present to hear him This is what he told us

I was born on the southern frontier My parents died when I was very small, but Heaven had compassion on me and raised up one to shelter me in my orphanhood Don Loreto Silva took me to his estancia on the Sarandi, a stream half a day's journey from Tandil, towards the setting sun He treated me like one of his own children, and I took the name of Silva He had two other children, Torcuato, who was about the same age as myself, and his daughter, Elaria, who was younger He was a widower when he took charge of me, and died when I was still a youth After his death we moved to Tandil, where we had a house close to the little town, for we were all minors, and the

property had been left to be equally divided between us when we should be of age. For four years we lived happily together, then when we were of age we preferred to keep the property undivided. I proposed that we should go and live on the estancia, but Torcuato would not consent, liking the place where we were living best. Finally, not being able to persuade him, I resolved to go and attend to the estancia myself. He said that I could please myself and that he should stay where he was with Elaria. It was only when I told Elaria of these things that I knew how much I loved her. She wept and implored me not to leave her.

"Why do you shed tears, Elaria?" I said, "is it because you love me? Know, then, that I also love you with all my heart, and if you will be mine, nothing can ever make us unhappy. Do not think that my absence at the estancia will deprive me of this feeling which has ever been growing up in me."

"I do love you, Anacleto," she replied, "and I have also known of your love for a long time. But there is something in my heart which I cannot impart to you, only I ask you, for the love you bear me, do not leave me, and do not ask me why I say this to you."

After this appeal I could not leave her, nor did I ask her to tell me her secret. Torcuato and I were friendly, but not as we had been before this difference. I had no evil thoughts of him, I loved him and was with him continually, but from the moment I announced to him that I had changed my mind about going to the estancia, and was silent when he demanded the reason, there was something in him which made it different between us. I could not open my heart to him about Elaria, and sometimes I thought that he also had a secret which he had no intention of sharing with me. This coldness did not, however, distress me very much, so great was the happiness I now experienced, knowing that I possessed Elaria's love. He was much away from the house, being fond of amusements, and he had also begun to gamble. About three months passed in this way, when one morning Torcuato, who was saddling his horse to go out, said, "Will you come with me, to-day, Anacleto?"

"I do not care to go," I answered.

"Look, Anacleto," said he, "once you were always ready to accompany me to a race or dance or cattle-marking. Why have you ceased to care for these things? Are you growing devout before your time, or does my company no longer please you?"

"It is best to tell him everything and have done with secrets,"



said I to myself, and so replied "Since you ask me, Torcuato, I will answer you frankly It is true that I now take less pleasure than formerly in these pastimes, but you have not guessed the reason rightly "

"What then is this reason of which you speak? "

"Since you cannot guess it," I replied, "know that it is love "

"Love for whom? " he asked quickly, and turning very pale

"Do you need ask? Elaria," I replied

I had scarcely uttered the name before he turned on me full of rage.

"Elaria! " he exclaimed "Do you dare tell me of love for Elaria! But you are only a blind fool, and do not know that I am going to marry her myself "

"Are you mad, Torcuato, to talk of marrying your sister? "

"She is no more my sister than you are my brother," he returned "I," he continued, striking his breast passionately, "am the only child of my father, Loreto Silva Elaria, whose mother died in giving her birth, was adopted by my parents And because she is going to be my wife, I am willing that she should have a share of the property, but you, a miserable foundling, why were you lifted up so high? Was it not enough that you were clothed and fed till you came to man's estate? Not a hand's-breadth of the estancia land should be yours by right, and now you presume to speak of love for Elaria "

My blood was on fire with so many insults, but I remembered all the benefits I had received from his father, and did not raise my hand against him Without more words he left me I then hastened to Elaria and told her what had passed

"This," I said, "is the secret you would not impart to me Why, when you knew these things, was I kept in ignorance? "

"Have pity on me, Anacleto," she replied, crying "Did I not see that you two were no longer friends and brothers, and this without knowing of each other's love? I dared not open my lips to you or to him It is always a woman's part to suffer in silence God intended us to be poor, Anacleto, for we were both born of poor parents, and had this property never come to us, how happy we might have been! "

"Why do you say such things, Elaria? Since we love each other, we cannot be unhappy, rich or poor "

"Is it a little matter," she replied, "that Torcuato must be our bitter enemy? But you do not know everything Before Torcuato's father died, he said he wished his son to marry me when we came of age When he spoke about it we were sitting together by his bed "

"And what did you say, Elaria?" I asked, full of concern

"Torcuato promised to marry me. I only covered my face, and was silent, for I loved you best even then, though I was almost a child, and my heart was filled with grief at his words. After we came here, Torcuato reminded me of his father's words. I answered that I did not wish to marry him, that he was only a brother to me. Then he said that we were young and he could wait until I was of another mind. This is all I have to say, but how shall we three live together any longer? I cannot bear to part from you, and every moment I tremble to think what may happen when you two are together."

"Fear nothing," I said. "To-morrow morning you can go to spend a week at some friend's house in the town, then I will speak to Torcuato, and tell him that since we cannot live in peace together we must separate. Even if he answers with insults I shall do nothing to grieve you, and if he refuses to listen to me, I shall send some person we both respect to arrange all things between us."

This satisfied her, but as evening approached she grew paler, and I knew she feared Torcuato's return. He did not, however, come back that night. Early next morning she was ready to leave. It was an easy walk to the town, but the dew was heavy on the grass, and I saddled a horse for her to ride. I had just lifted her to the saddle when Torcuato appeared. He came at great speed, and throwing himself off his horse, advanced to us. Elaria trembled and seemed ready to sink upon the earth to hide herself like a partridge that has seen the hawk. I prepared myself for insults and perhaps violence. He never looked at me, he only spoke to her.

"Elaria," he said, "something has happened—something that obliges me to leave this house and neighbourhood at once. Remember when I am away that my father, who cherished you and enriched you with his bounty, and who also cherished and enriched this ingrate, spoke to us from his dying bed and made me promise to marry you. Think what his love was, do not forget that his last wish is sacred, and that Anacleto has acted a base, treacherous part in trying to steal you from me. He was lifted out of the mire to be my brother and equal in everything except this. He has got a third part of my inheritance—let that satisfy him, your own heart, Elaria, will tell you that a marriage with him would be a crime before God and man. Look not for my return to-morrow nor for many days. But if you two begin to laugh at my father's dying wishes, look for me, for then I shall not delay to come back to you, Elaria, and to you, Anacleto. I have spoken."

He then mounted his horse and rode away. Very soon we learned the cause of his sudden departure. He had quarrelled over his cards and in a struggle that followed had stabbed his adversary to the heart. He had fled to escape the penalty. We did not believe that he would remain long absent, for Torcuato was very young, well off, and much liked, and this was, moreover, his first offence against the law. But time went on and he did not return, nor did any message from him reach us, and we at last concluded that he had left the country. Only now after four years have I accidentally discovered his fate through seeing his piebald horse.

After he had been absent over a year, I asked Elaria to become my wife. "We cannot marry till Torcuato returns," she said. "For if we take the property that ought to have been all his, and at the same time disobey his father's dying wish, we shall be doing an evil thing. Let us take care of the property till he returns to receive it all back from us, then, Anacleto, we shall be free to marry."

I consented, for she was more to me than lands and cattle. I put the estancia in order and, leaving a trustworthy person in charge of everything, I invested my money in fat bullocks to resell in Buenos Ayres, and in this business I have been employed ever since. From the estancia I have taken nothing, and now it must all come back to us—his inheritance and ours. This is a bitter thing and will give Elaria great grief.

Thus ended Anacleto's story, and when he had finished speaking and still seemed greatly troubled in his mind, Sotelo said to him, "Friend, let me advise you what to do. You will now shortly be married to the woman you love and probably some day a son will be born to you. Let him be named Torcuato, and let Torcuato's inheritance be kept for him. And if God gives you no son, remember what was done for you and for the girl you are going to marry, when you were orphans and friendless, and look out for some unhappy child in the same condition, to protect and enrich him as you were enriched."

"You have spoken well," said Anacleto. "I will report your words to Elaria, and whatever she wishes done that will I do."

So ends my story, friend. The cattle-drover left us that night and we saw no more of him. Only before going he gave the piebald and the silver trappings to Sotelo. Six months after his visit, Sotelo also received a letter from him to say that his marriage with Elaria had taken place; and the letter was accompanied with a present of seven cream-coloured horses with black manes and hoofs.

EDEN PHILLPOTTS

B. 1862

## THE SKIPPER'S BIBLE

"IT'S like this 'ere the poor beggar's goin' to his death without no sort of sky-piloting whatsoever I looks after his body, feeds him 'andsome, but his soul—Lord knows that ain't in my line," said Dick Ferris, the mate of the *Flying Fish*

"No, nor yet in anybody's line aboard this ship," answered the carpenter

The *Flying Fish* was an ungodly vessel From her Yankee captain, Joseph Greenleaf, to Richard Ferris, an Englishman—from her cook to her cabin-boy, her ethical strength was low

The ship bowled briskly through the Caribbean Sea, bound for Kingston, Jamaica She carried cargo and a few passengers, to one of whom the words spoken by Ferris had reference He was a negro "decker," and a man of some importance, judging from the fact that a special erection of boards had been raised round him But the circumstances of capital crime alone raised Black Neil to his present eminence He now approached the end of his voyage and his earthly pilgrimage together A fellow-Ethiopian's blood was upon his head, sentence of death had been passed, and the gallows waited for him at Kingston

Nobody paid the doomed man much attention excepting Dick Ferris He, however, took lively interest in Black Neil, listened to the recital of his misdeeds, and considered the extent of his punishment very unreasonable

"It's like this 'ere," Dick explained to his friends, "I don't say as how he didn't kill a man He did, an' you or me 'ud done the same in his place His wife ran away with another nigger, and he laid wait and put daylight through him Quite right too"

"I spoke to him yesterday," remarked the carpenter "I said, 'You're a mortal bad lot, Neil, there's no denyin' of it', and he said, 'Dat's so, massa' Then I said, 'They'll hang you, old man, sure as eggs is eggs; and why shouldn't they?' And he says, 'Yes, sar, dat's so I's gwine to my 'count' "

"It's his future state as bothers him," declared Dick Ferris "Quite natural too We may think he ain't done much harm—leastways I do—but the law says he has, so he'll die with a sin on his soul An' you bet they'll take the judge's word for it in the next world, not a nigger's Anyways, it's 'ard he can't have no sky-piloting, 'cause he's a man, though black "

"You won't worry your head about niggers when you've seen a bit more of 'em, Britisher," sneered a misshapen seaman with a hairy head like a bull and a deformed leg

"Maybe not, but they're a blamed sight better'n some whites 'Tain't everybody as kills a fellow-creature's hanged, John Droop," answered Dick sharply

It happened that Mr Droop's past was open to criticism at one or two points, so the mate's remark restored peace and made the other seamen laugh

Then Ferris strolled forward to see Black Neil

The negro was sitting in his temporary cabin on deck—sitting chained with heavy irons, his elbows on his knees, his head down between his hands

"Well, how goes it? Did you have the grub cook sent along?" asked Dick, lighting his pipe

"Yes, tank you, massa Plenty good grub, sar, but I don't want nuffin' to eat much "

"No Sky-piloting is what you hankers arter, boy Natural enough too But blame me if there's a drop of that tap aboard. Have a whiff? "

"Tank you, massa, don't want no 'bacco now "

Black Neil shook his head and looked out over the blue waters with great, sunken eyes He was an elderly negro, deep wrinkles already furrowed his face, and his wool had begun to grow grey

"It's berry bad, sar, feelin' you's all wrong wid Gor A'mighty I's damn bad lot, what nebber learnt no prayers nor nuffin', and now I gib de world to hear a minister speak up for me, or any udder gem'man what could "

"Jus' so, jus' so," answered Dick Then he sucked his pipe and was silent

Presently Neil spoke again

"I'm a 'complished man, sar, in my way I can read plenty If you got de Word now, or de book ob hymn songs, seein' dar's

no minister nor gem'man what can pray, I might do 'long wid dem "

" Ain't no good books here, my son , devil a one of 'em An' you can read ! Well, that beats anything There's no man on this 'ere craft can read 'cept you an' me, an' the skipper an' the cook "

" Hab dey got good books, sar ? "

" Not them , leastways only navigation an' charts There ain't no sky-piloting in charts, I judge Lord ! it's 'ard Can't you manage a bit of a pray nohow ? You'd feel easier like if you could "

The negro only shook his head again

" I no pray widdout somefin to start me off, sar "

" Well, keep up your pecker, anyhow I'll look around Maybe the deckers knows a hymn, or summat of the sort, among 'em But you did ought to have taken your last cruise in another ship forsartin "

Then he rolled off to see if the *Flying Fish* contained any shred or scrap of spiritual food for Black Neil

When the members of the crew found that their first mate extended such sympathy to the condemned negro, they too, for the most part, showed a fragment of humanity in their treatment of him Men who would have kicked a black from before them, like dirt, under ordinary circumstances, felt that Black Neil's peculiar position entitled him to a little respect Moreover, they considered his punishment was altogether excessive He suffered for an action most of them deemed praiseworthy Fellow-negroes, also, would peep over the partition which screened the culprit If the black warder who guarded him was out of the way, they handed him bananas, sugar-cane, and like luxuries When the attendant sat in his place they would simply roll their brown eyes and express pious hopes that their brother had made his peace " wid de Lord "

But that was just what Black Neil had failed to do, and was terribly anxious to do, and could see no possibility of doing Superstitious to the heart's core, and in a measure fatalistic also, death had now become a familiar idea, and its terrors were quite dwarfed and dimmed by the more terrific certainty of what awaited him beyond He took his judge's word for it that he was but a lost man , and now, with frantic desire, he yearned for some outlet to his penitence, for some religious channel through which even he might crawl within earshot of his outraged Maker Heaven seemed blind and dumb to the poor wretch But when Ferris left him, the memory of an old tune fell

like a wakened echo on Black Neil's ear. He could not recall the words of the song, he only recollected that they were religious and treated of a golden shore. The air was better than nothing, and he lifted up his voice and whined the melody again and again to himself until his guard ordered him to be silent.

That night Dick Ferris recounted his recent conversation to an interested group.

"I told him," he said, in conclusion, "how to my knowledge there weren't no such thing as a Bible aboard this craft, nor yet a Prayer-book neither."

"Yes, there is, Mr Ferris," piped the cabin-boy.

"Eh? Don't say you've got one, Sprig?"

"No, I ain't, but see this eye," and he pointed to a big black bruise on his cheek, "that came along of a Bible. The boss have got one."

"The old man!" exclaimed two or three men in wildest surprise.

"He have. I was tidyin' his cabin, round, puttin' things ship-shape, and he sees me hanging on to the shelf over his bunk, dustin' of it. There was a book atop with a polished black cover, and I picked it up to clean it. Then he says, 'Take your dirty paws off the Word o' God, boy, and stop messin' round and get out of here.' So I ups and says, meanin' no sauce, 'I was cleanin' of the book, sir, as is a inch in dust and dirt.' Then he lathered me proper for answering."

Nobody appeared much interested in Sprig's personal experience, but the fact that Mr Greenleaf possessed a Bible called for a good deal of more or less profane comment.

"Who'll ask for the loan of it?" inquired Ferris.

Not a man answered, and he spoke again.

"I would, an' chance it, but it's useless. He hates me worse than poison, 'cause I'm the only Englishman aboard. He's been a damned beast to me since I sailed. I reckon you'd get it, Bell, if any on us could."

Bell, the carpenter already mentioned, was considered to be the captain's favourite—a position he denied. This man scratched his head and grumbled, and did not take kindly to the enterprise. The general sense of the meeting went against him, however, and he prepared to depart.

"Tell the skipper it's for the nigger forward as is goin' to be hung.

He can't refuse sky-piloting even to a nigger in that fix," concluded Ferris

"He will," said the cook of the *Flying Fish* "Mark my words; he'll tell Bell to go to hell"

Pretty soon Bell returned baffled

"He says he ain't disposed to lend the Word of God to a black-guard black man And he also says we're to sheer off from Neil for the future If he sees a hand alongside him again, the cap'n says that hand will hear from him direct," explained the carpenter

"There's a blasted swine!" burst out Dick

"It shows how a man may have a Bible, and yet never behave so as to let other folks guess it," commented Bell

They were lost in speculation as to how the skipper ever came to possess a Bible at all Then the men separated, and Ferris went away His muddy brains were on fire with the wickedness of the skipper He had a rooted conviction that the Bible would make all the difference to Black Neil's position, if not in this world, at any rate in the next, he was firmly convinced, therefore, that Providence had placed this Bible on board for the negro's especial benefit No matter had ever stirred his faculties so deeply, he could not get the subject out of his head, and the more he reflected upon it, the stronger grew his determination to secure the book for Neil at all costs None took the skipper's refusal to heart as he did, indeed, their first indignation blunted, his comrades laughed at him for being in such anxiety about so trifling a business But Dick would not regard the subject as trifling; it appeared to him that tremendous issues were involved. He was new to intercourse with the negroes, and their interests and welfare seemed perfectly serious concerns to him He debated with himself through long moonlit watches, and his thoughts kept him awake in his bunk Personally he had never pretended to religion, but the sight of a sinner—friendless and comfortless on the brink of the grave—the spectacle of a fellow-man separated by a few days only from death—woke strange forces in the heart of Dick Ferris and set his mental machinery working more briskly than ever it had worked before He knew what a "call" meant, because a friend of his had once received a "call," and joined the Salvation Army upon the strength of it And now an overwhelming impression grew strong and stronger within him, which notion finally dominated the man and pointed to action

Black Neil, Dick told himself, must have the skipper's Bible, and



Providence had evidently marked him out as a means by which the soul-saving book should reach its destination. Eternal life for a perishing creature lurked in his captain's cabin, the mate of the *Flying Fish* determined to secure it. If physical force became necessary, then he would fight. The fact that such a course was mutiny and would be punished as such, did not particularly appeal to him, indeed, the consequences of his pending action failed to weigh with him until too late. "After all," he reflected, "the man's a reasonable being. Like enough he'll hand over the book and make no splutter. If he don't—well, he's been spoilin' for a smack at me these two voyages, now he shall have it. Sure enough, it's a queer twist to get in the brain-pan of a seafarin' man, all over a blessed nigger too, that nobody takes no count on, but there it is, red hot, and can't be smothered."

That night Dick knocked at the captain's door, was told to come in, and entered to find a very unexpected picture. The skipper lay upon his bunk smoking, and actually reading his Bible!

"What do you want?" he asked shortly, glancing up.

The other, from sheer amazement, clean forgot the elaborate remarks with which he had come prepared. He stood silent, irresolute, open-mouthed, gazing upon this wonder before him.

"What do you want, you gaping fool?" inquired Mr Greenleaf once more.

Then Dick found his tongue.

"That, guv'ner," he answered, pointing to the open book.

The captain laughed, and then swore.

"This ship's grown mighty religious of late, seems to me. You're the second's come on the same wild-goose chase. What the fury's the matter with you?"

"'Tain't for myself. I don't waht no Bibles," answered Ferris. "It's like this 'ere, that cove that's going to be hanged at Kingston's gettin' blamed low and down in the mouth. He's off his feed and takin' on pitiful—'cause why? 'Cause he ain't got no sky-piloting. You've got a Bible, and he can read, so he says, therefore, I reckoned to ask you to lend it out to him. I'll go bail he won't do no harm to it."

"Oh, you reckoned that, did you? Well, I reckon you'd best mind your own bloody business in future, and not waste no more time fooling round that black sweep. I don't lend no Bible of mine to him or any one. Ain't I reading it myself? Get out of this sharp. And I'll say more than that if any one of you come around again."

He went on reading, but Ferris stood his ground, and twisted his hat about in his hands

"Why don't you clear? Ain't the skipper's own cabin private from you devils?"

"Well, it's like this 'ere," answered Dick very slowly "Sometimes a man finds he ain't 'is own boss no more I ain't I feels a kind o' call sayin' how Black Neil must have that Bible o' yourn You see, blacks is now calculated to have souls, same as whites, and his soul's in a proper darned fix, owin' to it's havin' no religion whatsoever That book 'ud make a powerful sight of difference—just all the difference between aloft and below maybe So I asks of you respectful to lend it to Black Neil"

"I'll see him damned first!"

"Then I guess I'll take it, skipper"

The two men looked at one another silently, and Ferris licked his great hands and rubbed them together in preparation For a moment the only sound in the cabin was the rasping of his rough palms Then Greenleaf spoke

"Go right ahead then, take it, or try to I've wanted to see what you were worth with your British gas and bounce Go right ahead I'll thrash you here, and then have you flogged on deck, and then——"

"Best arrange that later, boss"

There was not much room in the captain's cabin for two big men to settle a quarrel by force of arms With such a confined area the battle promised to be short and decisive, and so it proved

Dick grabbed the Bible, and Greenleaf hit him in the face, whereupon Dick dropped the book and turned his attention to his superior officer Both men were soon struggling upon the floor, first one uppermost, then the other The American was tall and very active, but Dick's bulk and weight told in that narrow ring He propped him again and again, for the skipper could not escape Greenleaf dropped frequently to avoid punishment, and Dick always waited for him to rise Both got well warmed and freely sprinkled with blood But Ferris was the straighter hitter, and Greenleaf's right eye soon had the shutters up Then, as they rose from a fall, with Dick under, the skipper, aware that he had more than met his match in such close quarters, lifted his hand over his head and snatched a revolver which hung upon the cabin wall He was quick, but hardly quicker than



Roll

from Friends



the other Ferris dashed in, and, with all his weight behind the blow, hit Mr Greenleaf full and fair upon the forehead as he fired One man went down in a limp, senseless heap in the corner of his cabin, the other felt a stab of pain in his shoulder, and then saw a sudden stream of blood trickling down his arm into his hand He picked up the Bible, and staggered out into the alley-way

A crowd had collected there upon sound of the shot, and Dick pushed through them, explaining as he went

"He've hit me somewheres in the shoulder, an' I've killed him Best go in an' get him on his bunk an' do what's possible "

Then, leaving a dotted line of red splashes on the deck, he went forward with his prize, and handed the Bible to Black Neil The negro clasped the book with rejoicings, and was little concerned to know what had taken place

"Read, boy, read like hell!" said Dick "Stick to it, there's a chance yet if you only hold on like grim death I've knocked him silly, but he may come round It's the skipper's own He don't understand no blessed Bibles, else he'd a' fought fair an' not fired on me But he pretty nigh missed, whereas I didn't You just buckle to it, an' read for all you're worth I've 'eard tell the second half is reckoned to be the best, and if Greenleaf's dead, you can keep the bally book till we get to port "

Then Ferris went to the galley to see after himself and secure the cook's aid

Fortunately for Dick, his shoulder had sustained but trifling injuries The skipper's bullet did little more than touch him, inflicting in its progress a superficial wound While the cook washed his injury and bound it up, Ferris asked after Mr Greenleaf.

"How's the old man?" he said

"Bad, seemingly There's nothing broke as I can find, and he's breathing pretty free, but he ain't come to his senses yet Reckon you've dented in his skull somewhere That's death, mind you "

"Guess there'll be another to go along with Neil at Kingston, then," said Ferris

Then the hours fled by, and the entire ship's company grew more and more anxious to learn how their captain prospered Sailors are but Job's comforters at best, and Dick heard enough before the dawn of the next day to depress him considerably.

" You was right in a sense, having a ' call,' like, to do it," explained Bell, who had a nice command of language and a luminous way of putting problems, " but the Law don't take no heed of a ' call ' What you've done is to mutiny, and steal the skipper's property, and maybe murder him Time will show If he dies, it is murder, if he lives, it's merely assault with intent to murder, and you'll get penal servitude for life "

" All for a nigger too," grumbled the cook

" For his soul," said Dick apologetically " I don't care nothing much for Neil, but his soul was in the scale, in a manner of speakin' Now he's sucking at the Book like a child at its mother's bosom, so who knows if he mayn't just wriggle into the right place by the skin of his teeth ? "

" Why are you so blamed sure niggers have any souls ? " inquired John Droop " Whar you gwine to draw any line betwixt us and them if they have souls ? "

" Don't you be too cocksure, my beauty, anyhow," answered the mate " If a drunken, dirty-hearted, mean, lopsided lout like you've got a working soul—then, I guess, there's a chance for everybody and every colour, monkeys included "

" When men like Richard Ferris takes to preachin' aboard the *Flying Fish*, after knocking in the skull bones of the skipper, then it's werry gratifyin' and werry conwincing, no doubt," retorted John<sup>t</sup>

But the skipper was not dead He recovered consciousness about two hours after the battle, and it happened that the cook was with him at the time

" The fus' thing he says, mighty faint in his throat, is, ' Whar'd I hit Ferris ? ' Then I says, ' You scratched his shoulder, sir, that's all ' Then he grunted and put his hand to his head, and says, ' I know whar he hit me ' After that he told me to make the cabin dark and clear out, but I stuck on, knowing as how he should have food, and I made him bite and drink a bit, owing to him being too feeble to refuse But he swore forcible and various I reckon he's turned the corner "

The cook was right, for within two days the skipper had his chair brought upon deck and presently appeared himself with a face every colour of the rainbow He sat and smoked, saying no word to anybody Then a strange thing occurred, for Mr Greenleaf suddenly arose, walked stiffly and lamely across the ship, and disappeared behind the partition which hid Black Neil The negro, absorbed in his book,

heard and heeded nothing He conned the Bible at morning, noon, and night Already he had won consolation from the Word

"How are you going on, nig'?" asked Greenleaf suddenly

"Berry nice, massa," answered Black Neil Then he looked up and saw who was speaking, and trembled as he clung to the Bible

"Lebe de precious Word, sar I'se getting straight wid de Lord fast now De Word get me into hebbin if you lebe him a little more Dey hang me up and I no care nuffin', 'cause I'se gwine to de golden shore So lebe de precious Word along wid me, massa "

"Goin' to the golden shore by way of the—— Wal, I guess many better'n you been hung I'll leave it on one condition If ever you makes that port, you must put in a word for this ship Just a remark in a gen'ral sort of way—needn't mention no names—only let on how the *Flying Fish* ain't all she might be Carn't do no harm I didn't lend that book kinder easy, but now you've got it, you can keep your fins on it till we get to Kingston And here's a bit o' lead pencil Just mark a notion here and ther as seems sort o' best to you "

Mr Greenleaf flung down a stump of pencil, and went off without further speech He had heard and believed a superstition that the dying or doomed have strange powers of inspiration extended to them, and he suspected that his Bible would greatly benefit from attention at Black Neil's hands His mind had been busy during recent hours, and his reflection had brought him to a somewhat unexpected conclusion

The men talked over this mystery of their skipper's continued silence

"He's nursin' it, mate, to keep it bilin'-hot for you in port," said Bell to Dick Ferris

"Not a shade of doubt, he's lyin' low and lettin' it just fester in him He's breakin' his heart to flog you afore all hands, only he knows he an't got strength to do you justice yet," declared the cook

The grand mystery kept all brains busy, and the great question none could answer. Why had not Greenleaf put Ferris in irons?

Upon the following day the skipper resumed his duties, and soon afterwards the *Flying Fish* sailed into Kingston Harbour Nothing out of the common occurred at that port There were rumours and whisperings, but Joseph Greenleaf took no official or definite move in the matter of his mate Work went on as usual, the vessel was unloaded and filled again, Black Neil went joyfully to gaol upon

learning that every benefit of clergy there awaited him during the few remaining days of his existence

" 'Twould break the poor fool's heart if he had a respite now," said Bell " He's just spoiling for his dance in the air "

About a week afterwards, at dawn of a golden morning, the *Flying Fish* sailed again, and, as she slipped away to sea, Dick stood for a moment at the stern, in the little house where Neil had lived, and looked out at the shining town and a black speck that fluttered from a flagstaff Then he found he was not alone

" What you starin' at ? " asked somebody standing by him It was the captain who spoke, and these were the first words which had passed between him and his mate, save upon ship matters, since their struggle

" I'm a-lookin' at that black flag over the prison, cap'n They've strung him up to-day He's gone—poor devil ! "

" We had some difference, if I remember, touching that nigger ? " said Greenleaf coolly

" We had It's like this 'ere I'm awful sorry I smashed you up so bad, but you didn't ought to have shot, though I takes it right down manly of you to 'ave kept your mouth shut, an' I humbly thanks you "

" Best thing to do when you've made a all-fired fool of yourself "

" It weren't no ordinary case like I felt 'called,' and stronger than a cargo of lions Sky-piloting was the only useful thing for a man in his fix , so I had to go for it "

" He said how if he gets aloft 'twill be through that Bible of mine So I reckoned, seeing there's room for improvement on this ship in a few particulars, to make a bargain with him If he gets there, I gave him the tip to put in a word for the *Flying Fish*, not mentioning no names, but just free an' general Smart—eh ? "

" Terrible smart, sure enough "

" And—and—you and me'd better shake, I reckon Then tell the boys to pull this shanty down again. It's done its work "



ANTHONY HOPE  
(SIR ANTHONY HOPE HAWKING)  
B. 1863

## THE GREY FROCK

**T**HE rights and wrongs of the matter are perhaps a little obscure, and it is possible to take his side as well as hers. Or perhaps there is really no question of sides at all—no need to condemn anybody, only another instance of the difficulty people have in understanding one another's point of view. But here, with a few lines added by way of introduction, are the facts as related in her obviously candid and sincere narrative.

Miss Winifred Petheram's father had an income from landed estate of about five thousand a year, and spent, say, six or thereabouts, his manor house was old and beautiful, the gardens delightful, the stables handsome and handsomely maintained, the housekeeping liberal, hospitable, almost lavish. Mr Petheram had three sons and four daughters, but the sons were still young, and not the cause of any great expense. Mrs Petheram was a quiet body, the two girls in the schoolroom were no serious matter, in fact, apart from the horses, Mildred and Winifred were, in a pecuniary point of view, the most serious burden on the family purse. For both were pretty girls, gay and fond of society, given to paying frequent visits in town and country, and in consequence needing many frocks and a considerable supply of downright hard cash. But everybody was very comfortable, only it was understood that at a period generally referred to as "some day" there would be very little for anybody except the eldest son. "Some day" meant, of course, when Mr Petheram reluctantly died, and thereby brought his family into less favourable worldly circumstances.

From this brief summary of the family's position the duty of Mildred and Winifred (and, in due course of time, of the two girls in the schoolroom also) stands forth salient and unmistakable. Mildred performed it promptly at the age of nineteen years. He was the second son of a baronet, and his elder brother was sickly and unmarried, but, like a wise young man, he took no chances, went on the Stock Exchange, and became exceedingly well-to-do in an exceedingly brief space of time—something, in fact, "came off" in South Africa, and when that happens ordinary limits of time and

probability are suspended So with Mildred all was very well , and it was odds that one of the boys would be provided for by his brother-in-law Winifred had just as good chances—nay, better , for her sensitive face and wondering eyes had an attraction that Mildred's self-possessed good looks could not exert But Winifred shilly-shallied (it was her father's confidential after-dinner word) till she was twenty-one, then refused Sir Barton Amesbury (in itself a step of doubtful sanity, as was generally observed), and engaged herself to Harold Jackson, who made two hundred a year and had no prospects except the doubtful one of maintaining his income at that level—unless, that is, he turned out a genius, when it was even betting whether a mansion or the workhouse awaited him , for that depends on the variety of genius Having taken this amazing course, Winifred was resolute and radiantly happy , her relatives, after the necessary amount of argument, shrugged their shoulders—the very inadequate *ultima ratio* to which a softening civilisation seems to have reduced relatives in such cases “ I can manage two hundred a year for her while I live,” said Mr Petheram, wiping his brow and then dusting his boots , he was just back from his ride “ After that——”

“ The insurance, my dear ? ” Mrs Petheram suggested But her husband shook his head , that little discrepancy above noted, between five and six thousand a year, had before this caused the insurance to be a very badly broken reed

Harold Jackson—for in him the explanation of Winifred's action must be sought—was tall, good-looking, ready of speech, and decidedly agreeable There was no aggressiveness about him, and his quiet manners repelled any suspicion of bumptiousness But it cannot be denied that to him Winifred's action did not seem extraordinary , he himself accounted for this by saying that she, like himself, was an Idealist, the boys by saying that he was “ stuck-up,” Mr Petheram by a fretful exclamation that in all worldly matters he was as blind as a new-born puppy Whatever the truth of these respective theories, he was as convinced that Winifred had chosen for her own happiness as that she had given him his And in this she most fully agreed. Of course, then, all the shrugging of shoulders in the universe could not affect the radiant contentment of the lovers, nor could it avert the swift passage of months which soon brought the wedding-day in sight, and made preparations for it urgent and indispensable

Married couples, even though they have only a precarious four hundred a year, must live somewhere—no idealism is independent

of a roof, on the contrary, it centres round the home, so Harold said, and the word "home" seemed already sacred to Winifred as her glance answered his. It was the happiest day of her life when she put on her dainty new costume of delicate grey, took her parasol and gloves, matched to a shade with her gown, and mounted into the smart dog-cart which Jennie, the new chestnut mare, was to draw to the station. A letter had come from Harold to say that, after long search, he had found a house which would suit them, and was only just a trifle more expensive than the maximum sum they had decided to give for rent. Winifred knew that the delicate grey became her well, and that Harold would think her looking very pretty, and she was going to see her home and his. Her face was bright as she kissed her father and jumped down from the dog-cart, but he sighed when she had left him, and his brow was wrinkled as he drove Jennie back. He felt himself growing rather old, "some day" did not seem quite as remote as it used, and pretty Winnie—well, there was no use in crying over it now. Wilful girls must have their way, and it was not his fault that confounded agitators had played the deuce with the landed interest. The matter passed from his thoughts as he began to notice how satisfactorily Jennie moved.

Winifred's lover met her in London, and found her eyes still bright from the reveries of her journey. To-day was a gala day—they drove off in a hansom to a smart restaurant in Piccadilly, joking about their extravagance. Everything was perfect to Winifred, except (a small exception, surely!) that Harold failed to praise, seemed almost not to notice, the grey costume, it must have been that he looked at her face only!

"It's not a large house, you know," he said at lunch, smiling at her over a glass of Graves. "Well, I shan't be wanting to get away from you," she answered, smiling. "Not very far, Harold!"

"Are your people still abusing me?"

He put the question with a laugh.

"They never abused you, only me." Then came the irrepressible question. "Do you like my new frock? I put it on on purpose—for the house, you know."

"Our home!" he murmured, rather sentimentally, it must be confessed. The question about the frock he did not answer, he was thinking of the home. Winifred was momentarily grateful to a stout lady at the next table, who put up her glass, looked at the frock, and with a nod of approval called her companion's attention to it. This was while Harold paid the bill.

Then they took another cab, and headed north—through Berkeley Square, where Winifred would have liked, but did not expect, to stop, and so up to Oxford Street. Here they bore considerably to the east, then plunged north again and drove through one or two long streets. Harold, who had made the journey before, paid no heed to the route, but talked freely of the delightful hours which they were to enjoy together, of books to read and thoughts to think, and of an intimate sympathy which, near as they were already to one another, the home and the home life alone could enable them fully to realise. Winifred listened, but far down in her mind now was another question, hardly easier to stifle than that about the frock. "Where are we going to?" would have been its naked form, but she yielded no more to her impulse than to look about her and mark and wonder. At last they turned by a sharp twist from a long narrow street into a short narrower street, where a waggon by the curbstone forced the cab to a walk, and shrill boys were playing an unintelligible noisy game.

"What queer places we pass through!" she cried with a laugh, as she laid her hand on his arm and turned her face to his.

"Pass through! We're at home," he answered, returning her laugh. "At home, Winnie!" He pointed at a house on the right-hand side, and, immediately after, the cab stopped. Winifred got out, holding her skirt back from contact with the wheel. Harold, in his eagerness to ring the door bell, had forgotten to render her this service. She stood on the pavement for a moment looking about her. One of the boys cried "Crikey, there's a swell!" and she liked the boy for it. Then she turned to the house. "It wants a lick of paint," said Harold cheerfully, as he rang the bell again.

"It certainly does," she admitted, looking up at the dirty walls.

An old woman opened the door, she might be said, by way of metaphor, to need the same process as the walls. A very narrow passage was disclosed behind her.

"Welcome!" said Harold, giving Winifred his hand and then presenting her to the old woman. "This is my future wife," he explained. "We've come to look at the house. But we won't bother you, Mrs. Blidgett, we'd rather run over it by ourselves. We shall enjoy that, sha'n't we, Winnie?"

Winnie's answer was a little scream and a hasty clutch at her gown, a pail of dirty water, standing in the passage, had threatened ruin, she recoiled violently from this peril against the opposite wall and drew away again, silently exhibiting a long trail of dark dust on her

new grey frock Harold laughed as he led the way into a small square room that opened from the passage

"That's the parlour," said the old woman, wiping her arms with her apron "You can find your way upstairs, nothing's locked" And with this remark she withdrew by a steep staircase leading underground

"She's the caretaker," Harold explained

"She doesn't seem to have taken much care," observed Winifred, still indignant about her gown and holding it round her closely as drapery clings to an antique statue

Miss Petheram's account of the house, its actual dimensions, accommodation, and characteristics, has always been very vague, and since she refused information as to its number in the street, verification of these details has remained impossible Perhaps it was a reasonably capacious, although doubtless not extensive, dwelling, perhaps, again, it was a confined and well-nigh stifling den She remembered two things—first, its all-pervading dirt, secondly, the remarkable quality which (as she alleged) distinguished its atmosphere She thought there were seven "enclosures," this term being arrived at (after discussion) as a compromise between "rooms" and "pens", and she knew that the windows of each of these enclosures were commanded by the windows of several other apparently similar and very neighbouring enclosures Beyond this she could give no account of her first half-hour in the house, her exact recollections began when she was left alone in the enclosure on the first floor, which Harold asserted to be the drawing-room, Harold himself having gone downstairs to seek the old woman and elicit from her some information as to what were and what were not tenant's fixtures in the said enclosure "You can look about you," he remarked cheerfully, as he left her, "and make up your mind where you're going to have your favourite seat Then you shall tell me, and I shall have the picture of you sitting there in my mind" He pointed to a wooden chair, the only one then in the room "Experiment with that chair," he added, laughing "I won't be long, darling"

Mechanically, without considering things which she obviously ought to have considered, Winifred sank into the designated seat, laid her parasol on a small table, and leant her elbows on the same piece of furniture as she held her face between her gloved hands The atmosphere again asserted its peculiar quality, she rose for a moment and opened the windows, fresh air was gained at the expense of spoilt gloves, and was weighted with the drawbacks of a baby's cries

and an inquisitive woman's stare from over the way Shutting the window again, she returned to her chair—the symbol of what was to be her favourite seat in days to come, her chosen corner in the house which had been the subject of so many talks and so many dreams There were a great many flies in the room, the noise of adjacent humanity in street and houses was miscellaneous and penetrating, the air was very close And this house was rather more expensive than their calculation had allowed They had immensely enjoyed making those calculations down there in the country, under the old yew hedge and in sight of the flower-beds beneath the library window She remembered the day they did it There was a cricket match in the meadow Mildred and her husband brought the drag over, and Sir Barton came in his tandem It was almost too hot in the sun, but simply delightful in the shade She and Harold had had great fun over mapping out their four hundred a year and proving how much might be done with it—at least compared with anything they could want when once they had the great thing that they wanted

The vision vanished, she was back in the dirty little room again, she caught up her parasol, a streak across the dust marked where it had lain on the table, she sprang up and twisted her frock round, craning her neck back, ah, that she had reconnoitred that chair! She looked at her gloves, then with a cry of horror she dived for her handkerchief, put it to her lips, and scrubbed her cheeks, the handkerchief came away soiled, dingy, almost black This last outrage overcame her, the parasol dropped on the floor, she rested her arms on the table and laid her face on them, and she burst into sobs, just as she used to do in childhood when her brothers crumpled a clean frock or somebody spoke to her roughly And between her sobs she cried, almost loudly, very bitterly "Oh, it's too mean and dirty and horrid!"

Harold had stolen softly upstairs, meaning to surprise the girl he loved, perhaps to let a snatched kiss be her first knowledge of his return He flushed red, and his lips set sternly, he walked across the room to her with a heavy tread She looked up, saw him, and knew that her exclamation had been overheard "What in the world is the matter?" he asked in a tone of cold surprise

It was very absurd—she couldn't stop crying, and from amid her weeping nothing more reasonable, nothing more adequate, nothing less trivial would come than confused murmurs of "My frock, Harold!" "My parasol!" "Oh, my face, my gloves!" He smiled con-

temptuously "Don't you see?" she exclaimed, exhibiting the gloves and parasol

"See what? Are you crying because the room's dirty?" He paused and then added, "I'm sorry you think it mean and horrid Very sorry, Winifred"

Offence was deep and bitter in his voice, he looked at her with a sort of disgust She stopped sobbing and regarded him with a gaze in which fright and expectation seemed mingled, as though there were a great peril, and just one thing that might narrowly avert it But his eyes were very hard She dried her tears, and then forlornly scrubbed her cheeks again He watched her with hostile curiosity, appearing to think her a very strange spectacle Presently he spoke "I thought you loved me Oh, I daresay you thought so too till I came into competition with your new frock I beg pardon—I must add your gloves and your parasol As for the house, it's no doubt mean and horrid, we were going to be poor, you see" He laughed scornfully, as he added, "You might even have had to do a little dusting yourself now and then! Horrible!"

"I just sat there and looked at him" That was Winifred's own account of her behaviour It is not very explicit and leaves room for much conjecture as to what her look said or tried to say But whatever the message was he did not read it He was engrossed in his own indignation, readier to hurt than to understand, full of his own wrong, of the mistake he had made, of her extraordinary want of love, of courage, of the high soul Very likely all this was a natural enough state of mind for him to be in Justice admits his provocation, the triviality of her spoken excuses gave his anger only too fine an opportunity He easily persuaded himself that here was a revelation of the real woman, a flash of light that showed her true nature, showing, too, the folly of his delusion about her Against all this her look and what it asked for had very little chance, and she could find no words that did not aggravate her offence

"This is really rather a ludicrous scene," he went on "Is there any use in prolonging it?" He waited for her to speak, but she was still tongue-tied "The caretaker needn't be distressed by seeing the awful effects of her omission to dust the room, but if you're composed enough, we might as well go" He looked round the room "You'll be glad to be out of this," he ended

"I know what you must think of me," she burst out, "but—but you don't understand—you don't see——"

"No doubt I'm stupid, but I confess I don't. At least there's only one thing I see." He bowed and waved his hand towards the door. "Shall we go?" he asked.

She led the way downstairs, her skirt again held close and raised clear of her ankles, her care for it was not lost on Harold as he followed her, for she heard him laugh with an obtrusive bitterness that made his mirth a taunt. The old caretaker waited for them in the passage.

"When'll you be coming, sir?" she asked.

"I don't know. It's not certain we shall come," said he. "The lady is not much taken with the house."

"Ah, well!" sighed the old woman resignedly.

For an account of their drive back to the station materials are, again, sadly wanting. "He hardly said a word, and I did nothing but try to get my face clean and my gloves presentable," was Winifred's history of their journey. But she remembered—or chose to relate—a little more of what passed while they waited for the train on the platform at Euston. He left her for a few minutes on the pretext of smoking a cigarette, and she saw him walking up and down apparently in thought. Then he came back and sat down beside her. His manner was grave now, to judge by his recorded words, perhaps it was even a little pompous, but when may young men be pompous, if not at such crises as these?

"It's no use pretending that nothing has happened, Winifred," he said. "That would be the hollowest pretence, not worthy, I think, of either of us. Perhaps we had better take some time to consider our course and—er—our relations to one another."

"You don't want to marry me now?" she asked simply.

"I want to do what is best for our happiness," he replied. "We cannot forget what has happened to-day."

"I know you would never forget it," she said.

He did not contradict her, he looked first at his watch, then along the platform for the approach of her train. To admit that he might forget it was impossible to him, in such a case of forgetfulness would be a negation of his principles and a slur on his perception. It would also be such a triumph over his vanity and his pride as it did not lie in him to achieve, such a forgiveness as his faults and virtues combined to put beyond the power of his nature. She looked at him, and "I smiled," she said, not seeming herself to know why she had smiled, but conscious that, in the midst of her woe, some subtly amusing thought about him had come into her mind. She had never been amused at



him before, so she, too, was getting some glimmer of a revelation out of the day's experience—not the awful blaze of light that had flashed on Harold's eyes, but a dim ray, just enough to give cause to that puzzled smile for which she could not explicitly account

So they parted, and for persons who have followed the affair at all closely it is hardly necessary to add that they never came together again. This issue was obvious, and Winifred seems to have made up her mind to it that very same evening, for she called her mother into her room (as the good lady passed on the way to bed) and looked up from the task of brushing the grey frock which she had spread out on the sofa

"I don't think I shall marry Mr Jackson now, mother," she said

Mrs Petheram looked at her daughter and at her daughter's gown

"You'd better tell me more about it to-morrow. You look tired to-night, dear," she replied

But Winifred never told her any more—in the first place, because the family was too delighted with the fact to care one straw about how it had come to pass, and, in the second place, on the more important ground that the thing was really too small, too trivial, and too absurd to bear telling—at least to the family. To me, for some reason or other, Winifred did tell it, or some of it—enough, anyhow, to enable me, with the help of a few touches of imagination, to conjecture how it occurred

"Don't you think it was very absurd?" she asked at the end of her story. We were sitting by the yew hedge, near the library windows, looking across the flower-beds to the meadow, it was a beautiful day, and the old place was charming. "Because," she added, "I did love him, you know, and it seems a small thing to separate about, doesn't it?"

"If he had behaved differently——" I began

"I don't see how he could be expected to," she murmured

"You expected him to," I said firmly. She turned to me with an appearance of interest, as though I might be able to interpret to her something that had been causing her puzzle. "Or you wouldn't have looked at him as you say you did—or smiled at him, as you admit you did. But you were wrong to expect him to, because he's not that kind of man."

"What kind of man?"

"The kind of man to catch you in his arms, smother you in kisses (allow me the old phrase), tell you that he understood all you felt,

knew all you were giving up, realised the great thing you were doing for him "

Winifred was listening I went on with my imaginary scene of romantic fervour " That when he contrasted that mean little place with the beauties you were accustomed to, with the beauties which were right and proper for you, when he saw your daintiness soiled by that dust, that gown whose hem he would willingly——"

" He needn't say quite as much as that," interrupted Winifred, smiling a little

" Well, or words to that effect," said I " That when he did all this and saw all this, you know, he loved you more, and knew that you loved him more than he had dared to dream, with a deeper love, a love that gave up for him all that you loved next best and second only to him , that after seeing your tears he would never doubt again that you would face all trials and all troubles with him at your side— Don't you think if he'd said something of that kind, accompanying his words with the appropriate actions——" I paused

" Well ? " asked Winifred

" Don't you think you might have been living in that horrid little house now, instead of being about to contract an alliance with Sir Barton Amesbury ? "

" How do you know I shall do that ? " she cried

" It needs," I observed modestly, " little skill to discern the approach of the inevitable " I looked at her thoughtful face and at her eyes , they had their old look of wondering in them " Don't you think that if he'd treated the situation in that way——? " I asked.

" Perhaps," she said softly " But he wouldn't think of all that. He was such an Idealist "

I really do not know why she applied that term to him at that moment, except that he used to apply it to himself at many moments But since it seemed to her to explain his conduct, there is no need to quarrel with the epithet

" And I hope," said I, " that the grey frock wasn't irretrievably ruined ? "

" I've never worn it again," she murmured.

So I suppose it was ruined—unless she has some other reason. But she would be right to treat it differently from other frocks , it must mean a good deal to her, although it failed to mean anything except its own pretty self to Mr Jackson.

## A LIBERAL EDUCATION

ANTHONY HOPE

"THERE'S ingratitude for you!" Miss Dolly Foster exclaimed suddenly

"Where?" I asked, rousing myself from meditation

She pointed at a young man who had just passed where we sat. He was dressed very smartly, and was walking with a lady attired in the height of fashion

"I *made* that man," said Dolly, "and now he cuts me dead before the whole of the Row! It's atrocious! Why, but for me, do you suppose he'd be at this moment engaged to three thousand a year and—and the plainest girl in London?"

"Not that," I pleaded, "think of——"

"Well, very plain, anyhow I was quite ready to bow to him I almost did"

"In fact you did?"

"I didn't I declare I didn't"

"Oh, well, you didn't then It only looked like it"

"I met him," said Miss Dolly, "three years ago At that time he was—oh, quite unpresentable He was everything he shouldn't be He was a teetotaler, you know, and he didn't smoke, and he was always going to concerts Oh, and he wore his hair long, and his trousers short, and his hat on the back of his head And his umbrella——"

"Where did he wear that?"

"He *carried* that, Mr Carter Don't be silly! Carried it unrolled, you know, and generally a paper parcel in the other hand, and he had spectacles too"

"He has certainly changed outwardly at least"

"Yes, I know, well, I did that I took him in hand, and I just taught him, and now——!"

"Yes, I know that But how did you teach him? Give him Saturday evening lectures, or what?"

"Oh, every-evening lectures, and most-morning walks And I

taught him to dance, and I broke his wretched fiddle with my own hands ! ”

“ What very arbitrary distinctions you draw ”

“ I don't know what you mean I do like a man to be smart, anyhow Don't you, Mr Carter ? You're not so smart as you might be Now, shall I take you in hand ? ” And she smiled upon me

“ Let's hear your method What did you do to him ? ”

“ To Phil Meadows ? Oh, nothing I just slipped in a remark here and there, whenever he talked nonsense I used to speak just at the right time, you know ”

“ But how had your words such influence, Miss Foster ? ”

“ Oh, well, you know, Mr Carter, I made it a *condition* that he should do just what I wanted in little things like that Did he think I was going to walk about with a man carrying a brown-paper parcel—as if he had been to the shop for a pound of tea ? ”

“ Still, I don't see why he should alter all his—— ”

“ Oh, you are stupid ! Of course, he liked me, you know ”

“ Oh, did he ? I see ”

“ You seem to think that very funny ”

“ Not that he did—but that, apparently, he doesn't ”

“ Well, you got out of that rather neatly—for you No, he doesn't now You see, he misunderstood my motive He thought—well, I do believe he thought I cared for him, you know Of course I didn't ”

“ Not a bit ? ”

“ Just as a friend—and a pupil, you know And when he'd had his hair cut and bought a frock-coat (fancy ! he'd never had one !), he looked quite nice He has nice eyes Did you notice them ? ”

“ Lord, no ! ”

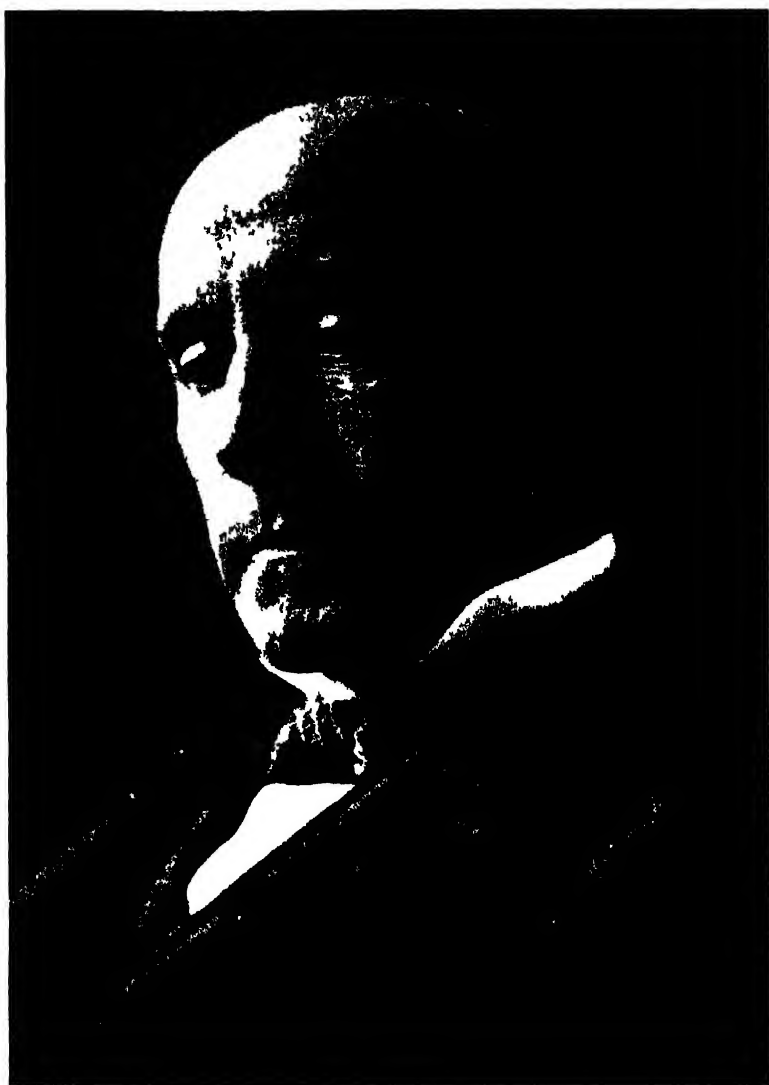
“ Well, you're so unobservant ”

“ Oh, not always I've observed that your—— ”

“ Please don't ! It's no use, is it ? ”

I looked very unhappy There is an understanding that I am very unhappy since Miss Foster's engagement to the Earl of Mickleham was announced

“ What was I saying before—before you—you know—oh, about Phil Meadows, of course I did like him very much, you know, or I shouldn't have taken all that trouble. Why, his own mother thanked me ! ”



11. 1916

*Anthony Hope*



"I have no more to say," said I

"But she wrote me a horrid letter afterwards."

"You're so very elliptical"

"So very what, Mr Carter?"

"You leave so much out, I mean After what?"

"Why, after I sent him away Didn't I tell you? Oh, we had the most awful scene He *raved*, Mr Carter He called me the most horrid names, and——"

"Tore his hair?"

"It wasn't long enough to get hold of," she tittered "But don't laugh It was really dreadful And so unjust! And then, next day, when I thought it was comfortably over, you know, he came back, and—and apologised, and called himself the most awful names, and—well, that was really worse"

"What did the fellow complain of?" I asked in wondering tones

"Oh, he said I'd destroyed his faith in women, you know, and that I'd led him on, and that I was—well, he was very rude indeed And he went on writing me letters like that for a whole year! It made me quite uncomfortable"

"But he didn't go back to short trousers and a fiddle, did he?" I asked anxiously

"Oh, no But he forgot all he owed me, and he told me that his heart was dead, and that he should never love any one again"

"But he's going to marry that girl"

"Oh, he doesn't care about her," said Miss Dolly reassuringly. "It's the money, you know He hadn't a farthing of his own Now he'll be set up for life"

"And it's all due to you!" said I admiringly

"Well, it is really"

"I don't call her such a bad-looking girl though" (I hadn't seen her face)

"Mr Carter! She's *hideous*!"

I dropped that subject

"And now," said Miss Dolly again, "he cuts me dead!"

"It is the height of ingratitude Why, to love you was a liberal education!"

"Yes, wasn't it? How nicely you put that 'A liberal education!' I shall tell Archie" (Archie is Lord Mickleham).

"What, about Phil Meadows?"

" Goodness me, no, Mr Carter Just what you said, you know "

" But why not tell Mickleham about Phil Meadows ? " I urged  
" It's all to your credit, you know "

" Yes, I know, but men are so foolish You see, Archie thinks——"

" Of course he does "

" You might let me finish "

" Archie thinks you were never in love before "

" Yes, he does Well, of course, I wasn't in love with Phil——"

" Not a little bit ? "

" Oh, well——"

" Nor with any one else ? "

Miss Dolly prodded the path with her parasol

" Nor with any one else ? " I asked again

Miss Dolly looked for an instant in my direction.

" Nor with any one else ? " said I

Miss Dolly looked straight in front of her

" Nor with——" I began

" Hullo, old chappie, where did you spring from ? "

" Why, Archie ! " cried Miss Dolly

" Oh, how are you, Mickleham, old man ? Take this seat , I'm just off—just off Yes, I was, upon my honour—got to meet a man at the club Good-bye, Miss Foster Jove ! I'm late ! "

And as I went I heard Miss Dolly say, " I thought you were *never* coming, Archie dear ! " Well, she didn't think he was coming just then. No more did I.



W. W. JACOBS

B. 1868

## THE MONKEY'S PAW

### I

**W**ITHOUT the night was cold and wet, but in the small parlour of Laburnam Villa the blinds were drawn and the fire burned brightly. Father and son were at chess, the former, who possessed ideas about the game involving radical changes, putting his king into such sharp and unnecessary perils that it even provoked comment from the white-haired old lady knitting placidly by the fire.

"Hark at the wind," said Mr. White, who, having seen a fatal mistake after it was too late, was amiably desirous of preventing his son from seeing it.

"I'm listening," said the latter, grimly surveying the board as he stretched out his hand. "Check."

"I should hardly think that he'd come to-night," said his father, with his hand poised over the board.

"Mate," replied the son.

"That's the worst of living so far out," bawled Mr. White, with sudden and unlooked-for violence, "of all the beastly, slushy, out-of-the-way places to live in, this is the worst. Pathway's a bog, and the road's a torrent. I don't know what people are thinking about. I suppose because only two houses in the road are let, they think it doesn't matter."

"Never mind, dear," said his wife soothingly, "perhaps you'll win the next one."

Mr. White looked up sharply, just in time to intercept a knowing glance between mother and son. The words died away on his lips, and he hid a guilty grin in his thin grey beard.

"There he is," said Herbert White, as the gate banged to loudly and heavy footsteps came toward the door.

The old man rose with hospitable haste, and opening the door, was heard condoling with the new arrival. The new arrival also

condoled with himself, so that Mrs White said, "Tut, tut!" and coughed gently as her husband entered the room, followed by a tall, burly man, beady of eye and rubicund of visage

"Sergeant-Major Morris," he said, introducing him.

The sergeant-major shook hands, and taking the proffered seat by the fire, watched contentedly while his host got out whisky and tumblers and stood a small copper kettle on the fire

At the third glass his eyes got brighter, and he began to talk, the little family circle regarding with eager interest this visitor from distant parts, as he squared his broad shoulders in the chair and spoke of wild scenes and doughty deeds, of wars and plagues and strange peoples

"Twenty-one years of it," said Mr White, nodding at his wife and son "When he went away he was a slip of a youth in the warehouse Now look at him"

"He don't look to have taken much harm," said Mrs White politely

"I'd like to go to India myself," said the old man, "just to look round a bit, you know"

"Better where you are," said the sergeant-major, shaking his head He put down the empty glass, and sighing softly, shook it again

"I should like to see those old temples and fakirs and jugglers," said the old man "What was that you started telling me the other day about a monkey's paw or something, Morris?"

"Nothing," said the soldier hastily "Leastways nothing worth hearing"

"Monkey's paw?" said Mrs White curiously

"Well, it's just a bit of what you might call magic, perhaps," said the sergeant-major, off-handedly

His three listeners leaned forward eagerly The visitor absent-mindedly put his empty glass to his lips and then set it down again His host filled it for him

"To look at," said the sergeant-major, fumbling in his pocket, "it's just an ordinary little paw, dried to a mummy"

He took something out of his pocket and proffered it Mrs White drew back with a grimace, but her son, taking it, examined it curiously

"And what is there special about it?" inquired Mr White as

he took it from his son, and having examined it, placed it upon the table

"It had a spell put on it by an old fakir," said the sergeant-major, "a very holy man. He wanted to show that fate ruled people's lives, and that those who interfered with it did so to their sorrow. He put a spell on it so that three separate men could each have three wishes from it."

His manner was so impressive that his hearers were conscious that their light laughter jarred somewhat.

"Well, why don't you have three, sir?" said Herbert White cleverly.

The soldier regarded him in the way that middle age is wont to regard presumptuous youth. "I have," he said quietly, and his blotchy face whitened.

"And did you really have the three wishes granted?" asked Mrs White.

"I did," said the sergeant-major, and his glass tapped against his strong teeth.

"And has anybody else wished?" persisted the old lady.

"The first man had his three wishes. Yes," was the reply, "I don't know what the first two were, but the third was for death. That's how I got the paw."

His tones were so grave that a hush fell upon the group.

"If you've had your three wishes, it's no good to you now, then, Morris," said the old man at last. "What do you keep it for?"

The soldier shook his head. "Fancy, I suppose," he said slowly. "I did have some idea of selling it, but I don't think I will. It has caused enough mischief already. Besides, people won't buy. They think it's a fairy tale, some of them, and those who do think anything of it want to try it first and pay me afterward."

"If you could have another three wishes," said the old man, eyeing him keenly, "would you have them?"

"I don't know," said the other. "I don't know."

He took the paw, and dangling it between his forefinger and thumb, suddenly threw it upon the fire. White, with a slight cry, stooped down and snatched it off.

"Better let it burn," said the soldier solemnly.

"If you don't want it, Morris," said the other, "give it to me."

"I won't," said his friend doggedly. "I threw it on the fire."

If you keep it, don't blame me for what happens. Pitch it on the fire again like a sensible man "

The other shook his head and examined his new possession closely. "How do you do it ? " he inquired

"Hold it up in your right hand and wish aloud," said the sergeant-major, "but I warn you of the consequences "

"Sounds like the *Arabian Nights*," said Mrs White, as she rose and began to set the supper "Don't you think you might wish for four pairs of hands for me ? "

Her husband drew the talisman from his pocket, and then all three burst into laughter as the sergeant-major, with a look of alarm on his face, caught him by the arm

"If you must wish," he said gruffly, "wish for something sensible "

Mr White dropped it back in his pocket, and placing chairs, motioned his friend to the table In the business of supper the talisman was partly forgotten, and afterward the three sat listening in an enthralled fashion to a second instalment of the soldier's adventures in India

"If the tale about the monkey's paw is not more truthful than those he has been telling us," said Herbert, as the door closed behind their guest, just in time for him to catch the last train, "we shan't make much out of it "

"Did you give him anything for it, father ? " inquired Mrs White, regarding her husband closely

"A trifle," said he, colouring slightly "He didn't want it, but I made him take it And he pressed me again to throw it away "

"Likely," said Herbert, with pretended horror "Why, we're going to be rich and famous and happy Wish to be an emperor, father, to begin with, then you can't be henpecked "

He darted round the table, pursued by the maligned Mrs White armed with an antimacassar

Mr White took the paw from his pocket and eyed it dubiously "I don't know what to wish for, and that's a fact," he said slowly "It seems to me I've got all I want "

"If you only cleared the house, you'd be quite happy, wouldn't you ? " said Herbert, with his hand on his shoulder. "Well, wish for two hundred pounds, then ; that'll just do it."

His father, smiling shamefacedly at his own credulity, held up the talisman, as his son, with a solemn face, somewhat marred by a wink

at his mother, sat down at the piano and struck a few impressive chords

"I wish for two hundred pounds," said the old man distinctly

A fine crash from the piano greeted the words, interrupted by a shuddering cry from the old man. His wife and son ran toward him

"It moved," he cried, with a glance of disgust at the object as it lay on the floor. "As I wished, it twisted in my hand like a snake"

"Well, I don't see the money," said his son as he picked it up and placed it on the table, "and I bet I never shall"

"It must have been your fancy, father," said his wife, regarding him anxiously

He shook his head. "Never mind, though, there's no harm done, but it gave me a shock all the same"

They sat down by the fire again while the two men finished their pipes. Outside, the wind was higher than ever, and the old man started nervously at the sound of a door banging upstairs. A silence unusual and depressing settled upon all three, which lasted until the old couple rose to retire for the night

"I expect you'll find the cash tied up in a big bag in the middle of your bed," said Herbert, as he bade them good-night, "and something horrible squatting up on top of the wardrobe watching you as you pocket your ill-gotten gains"

He sat alone in the darkness, gazing at the dying fire, and seeing faces in it. The last face was so horrible and so simian that he gazed at it in amazement. It got so vivid that, with a little uneasy laugh, he felt on the table for a glass containing a little water to throw over it. His hand grasped the monkey's paw, and with a little shiver he wiped his hand on his coat and went up to bed

## II

In the brightness of the wintry sun next morning as it streamed over the breakfast table he laughed at his fears. There was an air of prosaic wholesomeness about the room which it had lacked on the previous night, and the dirty, shrivelled little paw was pitched on the sideboard with a carelessness which betokened no great belief in its virtues

"I suppose all old soldiers are the same," said Mrs. White. "The idea of our listening to such nonsense! How could wishes be granted

in these days? And if they could, how could two hundred pounds hurt you, father?"

"Might drop on his head from the sky," said the frivolous Herbert.

"Morris said the things happened so naturally," said his father, "that you might if you so wished attribute it to coincidence."

"Well, don't break into the money before I come back," said Herbert as he rose from the table. "I'm afraid it'll turn you into a mean, avaricious man, and we shall have to disown you."

His mother laughed, and following him to the door, watched him down the road, and returning to the breakfast table, was very happy at the expense of her husband's credulity. All of which did not prevent her from scurrying to the door at the postman's knock, nor prevent her from referring somewhat shortly to retired sergeant-majors of bibulous habits when she found that the post brought a tailor's bill.

"Herbert will have some more of his funny remarks, I expect, when he comes home," she said, as they sat at dinner.

"I dare say," said Mr. White, pouring himself out some beer, "but for all that, the thing moved in my hand, that I'll swear to."

"You thought it did," said the old lady soothingly.

"I say it did," replied the other. "There was no thought about it, I had just— What's the matter?"

His wife made no reply. She was watching the mysterious movements of a man outside, who, peering in an undecided fashion at the house, appeared to be trying to make up his mind to enter. In mental connection with the two hundred pounds, she noticed that the stranger was well dressed, and wore a silk hat of glossy newness. Three times he paused at the gate, and then walked on again. The fourth time he stood with his hand upon it, and then with sudden resolution flung it open and walked up the path. Mrs. White at the same moment placed her hands behind her, and hurriedly unfastening the strings of her apron, put that useful article of apparel beneath the cushion of her chair.

She brought the stranger, who seemed ill at ease, into the room. He gazed at her furtively, and listened in a preoccupied fashion as the old lady apologised for the appearance of the room, and her husband's coat, a garment which he usually reserved for the garden. She then waited as patiently as her sex would permit, for him to broach his business, but he was at first strangely silent.

"I—was asked to call," he said at last, and stooped and picked a piece of cotton from his trousers "I come from 'Maw and Meggins' "

The old lady started "Is anything the matter?" she asked breathlessly "Has anything happened to Herbert? What is it? What is it?"

Her husband interposed "There, there, mother," he said hastily "Sit down, and don't jump to conclusions You've not brought bad news, I'm sure, sir", and he eyed the other wistfully.

"I'm sorry——" began the visitor

"Is he hurt?" demanded the mother wildly

The visitor bowed in assent "Badly hurt," he said quietly, "but he is not in any pain."

"Oh, thank God!" said the old woman, clasping her hands "Thank God for that! Thank——"

She broke off suddenly as the sinister meaning of the assurance dawned upon her and she saw the awful confirmation of her fears in the other's averted face She caught her breath, and turning to her slower-witted husband, laid her trembling old hand upon his There was a long silence

"He was caught in the machinery," said the visitor at length in a low voice

"Caught in the machinery," repeated Mr White in a dazed fashion, "yes"

He sat staring blankly out at the window, and taking his wife's hand between his own, pressed it as he had been wont to do in their old courting days nearly forty years before

"He was the only one left to us," he said, turning gently to the visitor "It is hard"

The other coughed, and rising, walked slowly to the window "The firm wished me to convey their sincere sympathy with you in your great loss," he said, without looking round "I beg that you will understand I am only their servant and merely obeying orders"

There was no reply, the old woman's face was white, her eyes staring, and her breath inaudible, on the husband's face was a look such as his friend the sergeant might have carried into his first action

"I was to say that Maw and Meggins disclaim all responsibility," continued the other. "They admit no liability at all, but in con-

sideration of your son's services, they wish to present you with a certain sum as compensation "

Mr White dropped his wife's hand, and rising to his feet, gazed with a look of horror at his visitor His dry lips shaped the words, " How much ? "

" Two hundred pounds," was the answer

Unconscious of his wife's shriek, the old man smiled faintly, put out his hands like a sightless man, and dropped, a senseless heap, to the floor

### III

In the huge new cemetery, some two miles distant, the old people buried their dead, and came back to a house steeped in shadow and silence It was all over so quickly that at first they could hardly realise it, and remained in a state of expectation as though of something else to happen—something else which was to lighten this load, too heavy for old hearts to bear

But the days passed, and expectation gave place to resignation—the hopeless resignation of the old, sometimes mis-called apathy Sometimes they hardly exchanged a word, for now they had nothing to talk about, and their days were long to weariness

It was about a week after that the old man, waking suddenly in the night, stretched out his hand and found himself alone The room was in darkness, and the sound of subdued weeping came from the window He raised himself in bed and listened

" Come back," he said tenderly " You will be cold "

" It is colder for my son," said the old woman, and wept afresh

The sound of her sobs died away on his ears The bed was warm, and his eyes heavy with sleep He dozed fitfully, and then slept until a sudden wild cry from his wife awoke him with a start

" *The paw !* " she cried wildly " The monkey's paw ! "

He started up in alarm " Where ? Where is it ? What's the matter ? "

She came stumbling across the room toward him " I want it," she said quietly " You've not destroyed it ? "

" It's in the parlour, on the bracket," he replied, marvelling " Why ? "

She cried and laughed together, and bending over, kissed his cheek.



"I only just thought of it," she said hysterically "Why didn't I think of it before? Why didn't *you* think of it?"

"Think of what?" he questioned

"The other two wishes," she replied rapidly. "We've only had one"

"Was not that enough?" he demanded fiercely

"No," she cried triumphantly, "we'll have one more Go down and get it quickly, and wish our boy alive again"

The man sat up in bed and flung the bedclothes from his quaking limbs "Good God, you are mad!" he cried, aghast

"Get it," she panted, "get it quickly, and wish— Oh, my boy, my boy!"

Her husband struck a match and lit the candle "Get back to bed," he said unsteadily "You don't know what you are saying"

"We had the first wish granted," said the old woman feverishly, "why not the second?"

"A coincidence," stammered the old man

"Go and get it and wish," cried his wife, quivering with excitement

The old man turned and regarded her, and his voice shook "He has been dead ten days, and besides he—I would not tell you else, but—I could only recognise him by his clothing If he was too terrible for you to see then, how now?"

"Bring him back," cried the old woman, and dragged him toward the door "Do you think I fear the child I have nursed?"

He went down in the darkness, and felt his way to the parlour, and then to the mantelpiece The talisman was in its place, and a horrible fear that the unspoken wish might bring his mutilated son before him ere he could escape from the room seized upon him, and he caught his breath as he found that he had lost the direction of the door His brow cold with sweat, he felt his way round the table, and groped along the wall until he found himself in the small passage with the unwholesome thing in his hand

Even his wife's face seemed changed as he entered the room It was white and expectant, and to his fears seemed to have an unnatural look upon it He was afraid of her

"*Wish!*" she cried, in a strong voice

"It is foolish and wicked," he faltered

"*Wish!*" repeated his wife

He raised his hand "I wish my son alive again."

The talisman fell to the floor, and he regarded it fearfully Then he sank trembling into a chair as the old woman, with burning eyes, walked to the window and raised the blind

He sat until he was chilled with the cold, glancing occasionally at the figure of the old woman peering through the window The candle-end, which had burned below the rim of the china candlestick, was throwing pulsating shadows on the ceiling and walls, until, with a flicker larger than the rest, it expired The old man, with an unspeakable sense of relief at the failure of the talisman, crept back to his bed, and a minute or two afterward the old woman came silently and apathetically beside him

Neither spoke, but lay silently listening to the ticking of the clock A stair creaked, and a squeaky mouse scurried noisily through the wall The darkness was oppressive, and after lying for some time screwing up his courage, he took the box of matches, and striking one, went downstairs for a candle

At the foot of the stairs the match went out, and he paused to strike another, and at the same moment a knock, so quiet and stealthy as to be scarcely audible, sounded on the front door

The matches fell from his hand and spilled in the passage He stood motionless, his breath suspended until the knock was repeated Then he turned and fled swiftly back to his room, and closed the door behind him A third knock sounded through the house

"*What's that?*" cried the old woman, starting up

"A rat," said the old man in shaking tones—"a rat It passed me on the stairs"

His wife sat up in bed listening A loud knock resounded through the house

"It's Herbert!" she screamed "It's Herbert!"

She ran to the door, but her husband was before her, and catching her by the arm, held her tightly

"What are you going to do?" he whispered hoarsely

"It's my boy, it's Herbert!" she cried, struggling mechanically "I forgot it was two miles away What are you holding me for? Let go I must open the door"

"For God's sake don't let it in," cried the old man, trembling

"You're afraid of your own son," she cried, struggling "Let me go I'm coming, Herbert, I'm coming"

There was another knock, and another The old woman with a

sudden wrench broke free and ran from the room. Her husband followed to the landing, and called after her appealingly as she hurried downstairs. He heard the chain rattle back and the bottom bolt drawn slowly and stiffly from the socket. Then the old woman's voice, strained and panting

"The bolt," she cried loudly "Come down. I can't reach it."

But her husband was on his hands and knees groping wildly on the floor in search of the paw. If he could only find it before the thing outside got in. A perfect fusillade of knocks reverberated through the house, and he heard the scraping of a chair as his wife put it down in the passage against the door. He heard the creaking of the bolt as it came slowly back, and at the same moment he found the monkey's paw, and frantically breathed his third and last wish.

The knocking ceased suddenly, although the echoes of it were still in the house. He heard the chair drawn back, and the door opened. A cold wind rushed up the staircase, and a long loud wail of disappointment and misery from his wife gave him courage to run down to her side, and then to the gate beyond. The street lamp flickering opposite shone on a quiet and deserted road.

## AN ODD FREAK

W W. JACOBS

"**S**PEAKING o' money," said the night-watchman, thoughtfully, as he selected an empty soap-box on the wharf for a seat, "the whole world would be different if we all 'ad more of it. It would be a brighter and a 'appier place for everybody."

He broke off to open a small brass tobacco-box and place a little quid of tobacco tenderly into a pouch in his left cheek, critically observing at the same time the efforts of a somewhat large steamer to get alongside the next wharf without blocking up more than three-parts of the river. He watched it as though the entire operation depended upon his attention, and, the steamer fast, he turned his eyes back again and resumed his theme.

"Of course it's the being short that sharpens people," he admitted thoughtfully, "the sharpest man I ever knew never 'ad a ha'penny in 'is pocket, and the ways 'e had o' getting other chaps to pay for 'is beer would ha' made 'is fortune at the law if 'e'd only 'ad the eddication. Playful little chap 'e was. I've seen men wot didn't know 'im stand 'im a pot o' beer and then foller 'im up the road to see 'im knock down a policeman as 'e'd promised. They'd foller 'im to the fust policeman 'e met, an' then 'e'd point them out and say they were goin' to half kill 'im, an' the policeman 'ud just stroll up an' ask 'em wot they were 'anging about for, but I never 'eard of a chap telling 'im. They used to go away struck all of a 'eap. He died in the accident ward of the London Horsepittle, poor chap."

He shook his head thoughtfully, and ignoring the statement of the watchman at the next wharf that it was a fine evening, shifted his quid and laughed rumblingly.

"The funniest way o' raising the wind I ever 'eard of," he said, in explanation, "was one that 'appened about fifteen years ago. I'd just taken my discharge as A B from the *North Star*, trading between here and the Australian ports, and the men wot the thing 'appened to was shipmates o' mine, although on'y firemen."

" I know it's a true story, becoss I was in it a little bit myself, and the other part I 'ad from all of 'em, and besides, they didn't see anything funny in it at all, or anything out of the way. It seemed to them quite a easy way o' making money, and I dessay if it 'ad come off all right I should have thought so too.

" In about a week arter we was paid off at the Albert Docks these chaps was all cleaned out, and they was all in despair, with a thirst wot wasn't half quenched and a spree wot was on'y in a manner o' speaking just begun, and at the end of that time they came round to a room wot I 'ad, to see wot could be done. There was four of 'em in all — old Sam Small, Ginger Dick, Peter Russet, and a orphan nevy of Sam's whose father and mother was dead. The mother 'ad been 'alf nigger an' 'alf Malay when she was living, and Sam was always pertickler careful to point out that his nevy took arter 'er. It was enough to make the pore woman turn in 'er grave to say so, but Sam used to say that 'e owed it to 'is brother to explain.

" ' Wot's to be done ? ' ses Peter Russet, arter they'd all said wot miserable chaps they was, an' 'ow badly sailor-men was paid. ' We're all going to sign on in the *Land's End*, but she doesn't sail for a fortnight, wot's to be done in the meantime for to live ? '

" ' There's your watch, Peter,' ses old Sam, dreamy-like, ' and there's Ginger's ring. It's a good job you kep' that ring, Ginger. We're all in the same boat, mates, an' I on'y wish as I'd got something for the general good. It's 'aving an orphan nevy wot's kep' me pore '.

" ' Stow it,' ses the nevy, short-like.

" ' Everything's agin us,' ses old Sam. ' There's them four green parrots I brought from Brazil, all dead '.

" ' So are my two monkeys,' ses Peter Russet, shaking 'is 'ead, ' they used to sleep with me, too '.

" They all shook their 'eads then, and Russet took Sam up very sharp for saying that p'r'aps if he 'adn't slep' with the monkeys they wouldn't ha' died. He said if Sam knew more about monkeys than wot 'e did, why didn't 'e put 'is money in them instead o' green parrots wot pulled their feathers out and died of cold.

" ' Talking about monkeys,' ses Ginger Dick, interrupting old Sam suddenly, ' wot about young Beauty here ? '

" ' Well, wot about him ? ' ses the nevy, in a nasty sort o' way.

" ' W'y, 'e's worth forty monkeys an' millions o' green parrots,' ses Ginger, starting up, ' an' here 'e is a-wasting of 'is opportunities,

going about dressed like a Christian Open your mouth, Beauty, and stick your tongue out and roll your eyes a bit '

" ' W'y not leave well alone, Ginger ? ' ses Russet , and I thought so too Young Beauty was quite enough for me without that

" ' Ter 'blige me,' ses Ginger anxiously, ' just make yourself as ugly as wot you can, Beauty '

" ' Leave 'im alone,' ses old Sam, as his nevy snarled at 'em. ' You ain't everybody's money yourself, Ginger '

" ' I tell you, mates,' ses Ginger, speaking very slow and solemn, ' there's a fortin in 'im I was lookin' at 'im just now, trying to think who 'e reminded me of At fust I thought it was that big stuffed monkey we saw at Melbourne, then I suddenly remembered it was a wild man of Borneo I see when I was a kid up in Sunderland When I say 'e was a 'andsome, good-'arted looking gentleman alongside o' you, Beauty, do you begin to get my meaning ? '

" ' Wot's the idea, Ginger ? ' ses Sam, getting up to lend me and Russet a 'and with 'is nevy

" ' My idea is this,' ses Ginger ' take 'is cloes off 'im and dress 'im up in that there winderblind, or something o' the kind , tie 'im up with a bit o' line, and take 'im round to Ted Reddish in the 'Ighway and sell 'im for a 'undred quid as a wild man of Borneo '

" ' Wot ? ' screams Beauty, in an awful voice ' Let go, Peter , let go, d'ye hear ? '

" ' 'Old your noise, Beauty, while your elders is speaking,' ses 'is uncle, and I could see 'e was struck with the idea.

" ' You jest try dressing me up in a winderblind,' ses his nevy, half-crying with rage

" ' Listen to reason, Beauty,' ses Ginger , ' you'll 'ave your share of the tin , it'll only be for a day or two, and then when we've cleared out you can make your escape, and there'll be twenty-five pounds for each of us '

" ' 'Ow do you make that out, Ginger ? ' ses Sam, in a cold voice.

" ' Fours into a 'undered,' ses Ginger

" ' Ho,' ses Sam, ' Ho, indeed. I wasn't aweer that 'e was your nevy, Ginger '

" ' Share and share alike,' ses Russet ' It's a very good plan o' yours, Ginger '

" Ginger holds 'is 'ead up and looks at 'im 'ard

" ' I thought o' the plan,' 'e ses, speaking very slow and deliberate.



*Russell*

A handwritten signature in cursive script, appearing to read 'W. W. Jacobs'. The signature is written in black ink on a white background.

*(W W Jacobs)*





' Sam's 'is uncle, and 'e's the wld man Threes into a 'undered go——'

" ' You needn't bother your fat 'ead adding up sums, Ginger,' ses Russet, very polite ' I'm going to 'ave my share , else I'll split to Ted Reddish '

" None of 'em said a word about me two of 'em was sitting on my bed , Ginger was using a 'ankerchief o' mine wot 'e found in the fireplace, and Peter Russet 'ad 'ad a drink out o' the jug on my wash-stand, and yet they never even mentioned me That's firemen all over, and that's 'ow it is they get themselves so disliked

" It took 'em best part of an 'our to talk round young Beauty, an' the langwidge they see fit to use made me thankful to think that the parrots didn't live to larn it

" You never saw anything like Beauty when they 'ad finished with 'im If 'e was bad in 'is cloes, 'e was a perfeck horror without 'em Ginger Dick faked 'im up beautiful, but there was no pleasing 'im Fust he found fault with the winder-blind, which 'e said didn't fit , then 'e grumbled about going bare-foot, then 'e wanted somethink to 'ide 'is legs, which was natural considering the shape of 'em Ginger Dick nearly lost 'is temper with 'im, and it was all old Sam could do to stop himself from casting 'im off for ever He was finished at last, and arter Peter Russet 'ad slipped downstairs and found a bit o' broken clothes-prop in the yard, and 'e'd been shown 'ow to lean on it and make a noise, Ginger said as 'ow if Ted Reddish got 'im for a 'undered pounds 'e'd get 'im a bargain

" ' We must 'ave a cab,' ses old Sam

" ' Cab ? ' ses Ginger ' What for ? '

" ' We should 'ave half Wapping following us,' ses Sam ' Go out and put your ring up, Ginger, and fetch a cab '

" Ginger started grumbling, but he went, and presently came back with the cab and the money, and they all went downstairs leading the wld man by a bit o' line They only met one party coming up, and 'e seemed to remember somethink 'e'd forgotten wot ought to be fetched at once

" Ginger went out fust and opened the cab-door, and then stood there waiting becos at the last moment the wld man said the winder-blind was slipping down They got 'im out at last, but before 'e could get in the cab was going up the road at ten miles an hour, with Ginger 'anging on to the door calling to it to stop

" It came back at about a mile an' a 'alf an hour, an' the remarks of the cabman was eggstrordinary Even when he got back 'e wouldn't start till 'e'd got double fare paid in advance , but they got in at last and drove off

" There was a fine scene at Ted Reddish's door Ginger said that if there was a bit of a struggle it would be a good advertisement for Ted Reddish, and they might p'r'aps get more than a 'undered, and all the three of 'em could do, they couldn't get the wild man out o' that cab, and the cabman was hopping about 'arf crazy Every now and then they'd get the wild man 'arf out, and then he'd get in agin and snarl 'E didn't seem to know when to leave off, and Ginger and the others got almost as sick of it as the cabman It must ha' taken two years' wear out o' that cab, but they got 'im out at last, and Reddish's door being open to see what the row was about, they went straight in

" ' Wot's all this ? ' ses Reddish, who was a tall, thin man, with a dark moustache

" ' It's a wild man o' Borneo,' ses Ginger, panting , ' we caught 'im in a forest in Brazil, an' we've come 'ere to give you the fust offer '

" Ted Reddish was so surprised 'e couldn't speak at fust The wild man seemed to take 'is breath away, and 'e looked in a 'elpless kind o' way at 'is wife, who'd just come down She was a nice-lookin' woman, fat, with a lot o' yaller hair, and she smiled at 'em as though she'd known 'em all their lives

" ' Come into the parlour,' she ses, kindly, just as Ted was beginning to get 'is breath

" They followed 'em in, and the wild man was just going to make hisself comfortable in a easy-chair, when Ginger give 'im a look, an' 'e curled up on the 'earthrug instead

" ' 'E ain't a very fine specimen,' ses Ted Reddish, at last

" ' It's the red side-whiskers I don't like,' ses his wife ' Besides, who ever 'eard of a wild man in a collar an' necktie ? '

" ' You've got hold o' the wrong one,' ses Ted Reddish, afore Ginger Dick could speak up for hisself

" ' Oh, I beg your pardin,' ses Mrs Reddish to Ginger, very polite ' I thought it was funny a wild man should be wearing a collar It's my mistake That's the wild man, I s'pose, on the 'earthrug ? '

" ' That's 'im, mum,' ses old Sam, very short.

" ' He don't look wild enough,' ses Reddish.

“ ‘ No , ‘ e’s much too tame,’ ses ‘is wife, shaking her yaller curls

“ The chaps all looked at each other then, and the wild man began to think it was time he did somethink , and the nearest thing ‘andy being Ginger’s leg, ‘e put ‘is teeth into it *Anybody* might ha’ thought Ginger was the wild man then, the way ‘e went on, and Mrs Reddish said that even if he so far forgot hisself as to use sich langwidge afore ‘er, ‘e oughtn’t to before a poor ‘eathen animal

“ ‘ How much do you want for ‘im ? ’ ses Ted Reddish, arter Ginger ‘ad got ‘is leg away, and taken it to the winder to look at it

“ ‘ One ‘undered pounds,’ ses old Sam

“ Ted Reddish looked at ‘is wife, and they both larfed as though they’d never leave orf

“ ‘ Why, the market price o’ the best wild men is only thirty shillings,’ ses Reddish, wiping ‘is eyes ‘ I’ll give you a pound for ‘im ’

“ Old Sam looked at Russet, and Russet looked at Ginger, and then *they* all larfed

“ ‘ Well, there’s no getting over you, I can see that,’ ses Reddish, at last ‘ Is he strong ? ’

“ ‘ Strong ? Strong ain’t the word for it,’ ses Sam

“ ‘ Bring ‘im to the back and let ‘im ‘ave a wrestle with one o’ the brown ‘ars, Ted,’ ses ‘is wife

“ ‘ ‘E’d kill it,’ ses old Sam, hastily

“ ‘ Never mind,’ ses Reddish, getting up , ‘ brown bears is cheap enough ’

“ They all got up then, none of ‘em knowing wot to do, except the wild man, that is, and *he* got ‘is arms tight round the leg o’ the table

“ ‘ Well,’ ses Ginger, ‘ we’ll be pleased for ‘im to wrestle with the bear, but we must ‘ave the ‘undered quid fust, in case ‘e injures ‘isself a little ’

“ Ted Reddish looked ‘ard at ‘im, and then he looked at ‘is wife agin

“ ‘ I’ll just go outside and talk it over with the missus,’ he ses, at last, and they both got up and went out

“ ‘ It’s all right,’ ses old Sam, winking at Ginger

“ ‘ Fair cop,’ ses Ginger, who was still rubbing his leg ‘ I told you it would be, but there’s no need for Beauty to overdo it He nearly ‘ad a bit out o’ my leg ’

“ ‘ A’right,’ ses the wild man, shifting along the ‘earthrug to where Peter was sitting , ‘ but it don’t do for me to be too tame. You ‘eard wot she said.’

“ ‘How are you feeling, old man?’ ses Peter, in a kind voice, as ‘e tucked ‘is legs away under ‘is chair

“ ‘Gurr,’ ses the wild man, going on all fours to the back of the chair, ‘gur—wug—wug—’

“ ‘Don’t play the fool, Beauty,’ ses Peter, with a uneasy smile, as he twisted ‘is ‘ead round ‘Call ‘im off, Sam’

“ ‘Gurr,’ ses the wild man, sniffing at ‘is legs, ‘gurr’

“ ‘Easy on, Beauty, it’s no good biting ‘im till they come back,’ ses old Sam

“ ‘I won’t be bit at all,’ ses Russet, very sharp, ‘mind that, Sam It’s my belief Beauty’s gone mad’

“ ‘Hush,’ ses Ginger, and they ‘eard Ted Reddish and ‘is wife coming back They came in and sat down agin, and after Ted ‘ad ‘ad another good look at the wild man and prodded ‘im all over an’ looked at ‘is teeth, he spoke up and said they’d decided to give a ‘undered pun for ‘im at the end o’ three days if ‘e suited

“ ‘I s’pose,’ ses Sam, looking at the others, ‘that we could ‘ave a bit of it now to go on with?’

“ ‘It’s agin our way of doing business,’ ses Ted Reddish ‘If it ‘ud been a lion or a tiger we could, but wild men we never do’

“ ‘The thing is,’ ses Mrs Reddish, as the wild man started on Russet’s leg and was pulled off by Sam and Ginger, ‘where to put ‘im’

“ ‘Why not put ‘im in with the black leopard?’ ses her ‘usband

“ ‘There’s plenty o’ room in his cage,’ says ‘is wife, thoughtfully, ‘and it ‘ud be company for ‘im too’

“ ‘I don’t think the wild man ‘ud like that,’ said Ginger

“ ‘I’m sartain sure ‘e wouldn’t,’ says old Sam, shaking ‘is ‘ead

“ ‘Well, we must put ‘im in a cage by hisself, I s’pose,’ ses Reddish, ‘but we can’t be put to much expense I’m sure the money we spent in cat’s meat for the last wild man we ‘ad was awful’

“ ‘Don’t you spend too much money on cat’s meat for ‘im,’ ses Sam, ‘‘e’d very likely leave it Bringing ‘im ‘ome, we used to give ‘im the same as we ‘ad ourselves, and he got on all right’

“ ‘It’s a wonder you didn’t kill ‘im,’ ses Reddish, severely ‘He’ll be fed very different ‘ere, I can tell you You won’t know ‘im at the end o’ three days’

“ ‘Don’t change ‘im too sudden,’ ses Ginger, keeping ‘is ‘ead turned away from the wild man, wot was trying to catch ‘is eye ‘Cook ‘is food at fust, ‘cos ‘e’s been used to it.’

“ ‘ I know wot to give ‘im,’ ses Reddish, offhandedly ‘ I an’t been in the line twenty-seven years for nothink Bring ‘im out to the back, an’ I’ll put ‘im in ‘is new ‘ome ’

“ They all got up and, taking no notice of the wild man’s whispers, follered Ted Reddish and ‘is wife out to the back, where all the wild beasts in the world seemed to ‘ave collected to roar out to each other what a beastly place it was

“ ‘ I’m going to put ‘im in “ ‘Appy Cottage ” for a time,’ says Reddish , ‘ lend a hand ‘ere, William,’ he says, beckoning to one of ‘is men

“ ‘ Is *that* “ ‘Appy Cottage ” ? ’ ses old Sam, sniffing, as they got up to a nasty, empty cage with a chain and staple in the wall

“ Ted Reddish said it was

“ ‘ Wot makes you call it that ? ’ ses Sam

“ Reddish didn’t seem to ‘ear ‘im, and it took all Ginger’s coaxing to get Beauty to go in

“ ‘ It’s on’y for a day or two,’ he whispers

“ ‘ But ‘ow am I to escape when you’ve got the brass ? ’ ses the wild man

“ ‘ We’ll look arter that,’ ses Ginger, who ‘adn’t got the least idea

“ The wild man ‘ad a little show for the last time, jst to impress Ted Reddish, an’ it was pretty to see the way William ‘andled ‘im The look on the wild man’s face showed as ‘ow it was a revelashun to ‘im Then ‘is three mates took a last look at ‘im and went off

“ For the fust day Sam felt uneasy about ‘im, and used to tell us tales about ‘is dead brother which made us think Beauty was lucky to take arter ‘is mother , but it wore off, and the next night, in the ‘ Admiral Cochrane,’ ‘e put ‘is ‘ead on Ginger’s shoulder, and wep’ for ‘appiness as ‘e spoke of ‘is nevy’s home at ‘ ‘Appy Cottage ’

“ On the third day Sam was for going round in the morning for the money, but Ginger said it wasn’t advisable to show any ‘aste , so they left it to the evening, and Peter Russet wrote Sam a letter signed ‘ Barnum,’ offering ‘im two ‘undered for the wild man, in case Ted Reddish should want to beat ‘em down They all ‘ad a drink before they went in, and was smiling with good temper to sich an extent that they ‘ad to wait a minute to get their faces straight afore going in

“ ‘ Come in,’ ses Reddish, and they follered ‘im into the parler, where Mrs Reddish was sitting in a armchair shaking ‘er ‘ead and looking at the carpet very sorrowful

“ ‘ I was afraid you’d come,’ she ses, in a low voice

“ ‘ So was I,’ ses Reddish

“ ‘ What for ? ’ ses old Sam It didn’t look much like money, and ‘e felt cross

“ ‘ We’ve ‘ad a loss,’ ses Mrs Reddish She touched ‘erself, and then they see she was all in black, and that Ted Reddish was wearing a black tie and a bit o’ crape round ‘is arm.

“ ‘ Sorry to ‘ear it, mum,’ ses old Sam

“ ‘ It was very sudden, too,’ ses Mrs Reddish, wiping ‘er eyes

“ ‘ That’s better than laying long,’ ses Peter Russet, comforting like

“ Ginger Dick gives a cough ‘ Twenty-five pounds was wot ‘e’d come for , not to ‘ear this sort o’ talk ’

“ ‘ We’ve been in the wild-beast line seven-an’-twenty years,’ ses Mrs Reddish, ‘ and it’s the fust time anythink of this sort ‘as ‘appened.’

“ ‘ ‘Ealthy family, I s’pose,’ ses Sam, staring

“ ‘ Tell ‘im, Ted,’ ses Mrs Reddish, in a ‘usky whisper.

“ ‘ No, you,’ ses Ted

“ ‘ It’s your place,’ ses Mrs Reddish

“ ‘ A woman can break it better,’ ses ‘er ‘usband.

“ ‘ Tell us wot ? ’ ses Ginger, very snappish

“ Ted Reddish cleared ‘is throat

“ ‘ It wasn’t our fault,’ he ses, slowly, while Mrs Reddish began to cry agin , ‘ gin’rally speakin’, animals is afraid o’ wild men, and night before last, as the wild man wot you left on approval didn’t seem to like “ ‘Appy Cottage,” we took ‘im out an’ put ‘im in with the tiger ’

“ ‘ Put him in with the WOT ? ’ ses the unfort’nit man’s uncle, jumping off ‘is chair

“ ‘ The tiger,’ ses Reddish ‘ We ‘eard something in the night, but we thought they was only ‘aving a little bit of a tiff, like In the morning I went down with a bit o’ cold meat for the wild man, and I thought at first he’d escaped , but looking a little bit closer——’

“ ‘ Don’t, Ted,’ ses ‘is wife ‘ I can’t bear it ’

“ ‘ Do you mean to tell me that the tiger ‘as eat ‘im ? ’ screams old Sam

“ ‘ Most of ‘im,’ ses Ted Reddish , ‘ but ‘e couldn’t ha’ been much of a wild man to let a tiger get the better of ‘im I must say I was surprised ’

“ ‘ We both was,’ ses Mrs Reddish, wiping ‘er eyes.

" You might ha' 'eard a pin drop , old Sam's eyes was large and staring, Peter Russet was sucking 'is teeth, an' Ginger was wondering wot the law would say to it—if it 'eard of it

" ' It's an unfortunit thing for all parties,' ses Ted Reddish, at last, getting up and standing on the 'earthrug

" ' 'Orrible,' ses Sam, 'uskily ' You ought to ha' known better than to put 'im in with a tiger Wot could you expect ? W'y, it was a mad thing to do '

" ' Crool thing,' ses Peter Russet

" ' You don't know the bisness properly,' ses Ginger, ' that's about wot it is W'y, I should ha' known better than that '

" ' Well, it's no good making a fuss about it,' ses Reddish ' It was only a wild man arter all, and he'd ha' died anyway, cos 'e wouldn't eat the raw meat we gave 'im, and 'is pan o' water was scarcely touched He'd ha' starved himself anyhow I'm sorry, as I said before, but I must be off , I've got an appointment down at the docks '

" He moved towards the door , Ginger Dick gave Russet a nudge and whispered something, and Russet passed it on to Sam

" ' What about the 'undered quid ? ' ses pore Beauty's uncle, catching 'oid o' Reddish as 'e passed 'im

" ' Eh ? ' ses Reddish, surprised—' Oh, that's off '

" ' Ho ! ' says Sam ' Ho ! is it ? We want a 'undered quid off of you , an' wot's more, we mean to 'ave it '

" ' But the tiger's ate 'im,' says Mrs Reddish, explaining

" ' I know that,' ses Sam, sharply ' But 'e was our wild man, and we want to be paid for 'im You should ha' been more careful We'll give you five minutes , and if the money ain't paid by that time, we'll go straight off to the police-station '

" ' Well, go,' ses Ted Reddish

" Sam got up, very stern, and looked at Ginger.

" ' You'll be ruined if we do,' ses Ginger

" ' All right,' ses Ted Reddish, comfortably

" ' I'm not sure they can't 'ang you,' ses Russet

" ' I ain't sure either,' says Reddish , ' and I'd like to know 'ow the law stands, in case it 'appens agin '

" ' Come on, Sam,' ses Ginger , ' come straight to the police-station '

" He got up, and moved towards the door Ted Reddish didn't

move a muscle, but Mrs Reddish flopped on her knees and caught old Sam round the legs, and 'eld him so's 'e couldn't move

" ' Spare 'im,' she ses, crying

" ' Lea' go o' my legs, mum,' ses Sam

" ' Come on, Sam,' ses Ginger , ' come to the police '

" Old Sam made a desperit effort, and Mrs Reddish called 'im a crool monster, and let go and 'id 'er face on 'er husband's shoulder as they all moved out of the parlour, larfing like a mad thing with hysterics

" They moved off slowly, not knowing wot to do, as, of course, they knew they daren't go to the police about it Ginger Dick's temper was awful , but Peter Russet said they mustn't give up all 'ope—he'd write to Ted Reddish and tell 'im as a friend wot a danger 'e was in Old Sam didn't say anything, the loss of his nevy and twenty-five pounds at the same time being almost more than 'is 'art could bear, and in a slow, melancholy fashion they walked back to old Sam's lodgings

" ' Well, what the blazes is up now ? ' ses Ginger Dick, as they turned the corner

" There was three or four 'undered people standing in front of the 'ouse, and women's 'eads out of all the winders screaming their 'ardest for the police, and as they got closer they 'eard a incessant knocking It took 'em nearly five minutes to force their way through the crowd, and then they nearly went crazy as they saw the wld man with 'alf the winder-blind missing, but otherwise well and 'arty, standing on the step and giving rat-a-tat-tats at the door for all 'e was worth

" They never got to know the rights of it, Beauty getting so excited every time they asked 'im 'ow he got on that they 'ad to give it up But they began to 'ave a sort of idea at last that Ted Reddish 'ad been 'aving a game with 'em, and that Mrs Reddish was worse than wot 'e was "



## CHARLWOOD WITH A NUMBER

**M**R ROBERT CHARLWOOD'S house was the curiosity of its neighbourhood. It was a comfortable and well-conditioned house enough, standing in ground of its own, topmost on the hill of a high London suburb. But Mr Charlwood had crowned the house (and consequently the hill) with curious superstructures, square, pointed, domed, ribbed, zinc-covered, pierced with apertures of weird design, structures some of which, it was reported, had been observed, in the twilight and dark of clear evenings, to shift and turn about on their axes, by the operation of no visible agency. Also there was a strange and contorted construction, like a pile of vast canisters, which clung irregularly to one side of the house, and was alleged to be a covered staircase leading from Mr Charlwood's study to the roof. All of which prodigies were explained by the simple fact that Mr Charlwood was an astronomer.

It might be said—it was said, in fact—that Mr Charlwood was not so much a great as a persistent astronomer, I have heard it more than hinted, indeed, that he was not a great astronomer at all. Such rumours as these never disturbed him, however, because he never heard them, for he was an astronomical hermit. A more than middle-aged, quite well-to-do, and not particularly ascetic hermit, but a hermit nevertheless. He wrote and printed a great many capital letters after his name, of which few people could guess the precise significance. These letters cost him a good number of guineas a year, for they were the initials of all sorts of societies, membership in which was strictly confined to any gentlemen who would pay the subscriptions. Some came quite reasonable, considering the number of letters, and the dearest were only five guineas per annum. I heard of one, indeed, which gave you four initials for a guinea, but this was a very common affair, and I believe Mr Charlwood's letters of honour averaged out at fourteen and ninepence apiece, taking one with another, a far more respectable price, though not at all excessive.

He was the author of many contributions to the chief scientific journals, their inability to print which—for reasons they carelessly left unexplained—caused great regret to the editors, and his lecture explaining eclipses, before the Parson's Green Debating Society, greatly

stirred that learned body On one occasion a daily newspaper had actually printed a letter from him giving the time and particulars of the appearances of a curious light in the sky, thought possibly to have been a manifestation of the *Aurora Borealis*, and there is every reason to believe that the same newspaper would also have published his account of his observation, through his large telescope, of an extraordinary ascending flight of meteors, if he had sent it, and he would undoubtedly have sent it but for a certain misgiving ensuing on his descent from the observatory and his reception of a report that the kitchen chimney had been on fire "It's a mercy the fire-engines haven't been here, sir," his housekeeper said, "the sparks were enough to bring 'em five miles"

It was to the management of this Mrs Page, his housekeeper, that Mr Charlwood owed the equable regularity of his life He was wholly unconscious of the debt, and by years of use and habit he had grown to regard his household as a sort of unchanging, pre-ordained Planetary System Mrs Page, the cook, the two housemaids, and the parlourmaid were all elderly and long-established servants, and so was the gardener and odd-man They revolved decorously and punctually about himself, the sun of the system, the resulting phenomena of shaving-water, breakfast, lunch, tea, dinner, dusting, fire-lighting, and lawn-mowing occurring with the exact and mechanical precision of the tides, the seasons, and the phases of the moon There was an occasional eclipse, in the form of a chimney-sweeping or spring cleaning, and the kitchenmaid and the boot-boy came and went and changed erratically, but Mr Charlwood saw little of them, and regarded them merely as irresponsible comets, with irregular orbits, striking in from outer space and away again, with no material disturbance to the solid planets about him So he went his unchanging way, sleeping, rising, shaving, eating, reading, writing, astronomising, all to the tick of the clock, and one day and the next were as like as two full moons Mrs Page, visibly and invisibly, inspired and regulated the system throughout, and the smallest change in the exact order of the daily round would have affected Mr Charlwood much as an astral catastrophe would have affected the tables in the Nautical Almanac For many years, however, Mrs Page saw that nothing so offensive as change of the smallest sort occurred in the Charlwood system

But at last things began to go wrong suddenly Mr Charlwood descended to the bathroom one morning, and there found the wrong

soap There was nothing to complain of in the soap itself—indeed, it was a cake of the same kind that had always occupied the soap-dish in his bedroom wash-stand—but it was not the sort of soap that ancient custom had sanctified for Mr Charlwood's bathroom use That was in a square cake, and this was oval That was white, and this was pink, moreover, the smell was altogether different Mr Charlwood did not discover the anomaly till he was in the bath, and it was too late to complain, and after he was dressed it slipped his memory till he beheld the same soap in the same place the next morning It was annoying and distressing, but he somehow forgot it again At any rate he forgot it till lunch, when the claret reminded him It was cold—it positively chilled the teeth, and if one thing had been more regular than another in Mr Charlwood's house, it was the temperature of Mr Charlwood's claret He reproved the parlour-maid, and sent it away, but his lunch was wholly ruined

Mrs Page presented herself after lunch, and apologised She had been in the habit of seeing to the proper warming of the claret, it seemed, but to-day something had distracted her attention, and she had forgotten it Mr Charlwood sat indignant, but far more amazed It was as though the Pole Star had "forgotten" its correct place at the tip of the Little Bear's tail Cold claret—it seemed an impossibility, yet here it was And at dinner that evening it came up—how do you think? Hot, sir, literally hot, parboiled! The whole thing was an outrage on the laws of nature But even worse was to follow When he demanded Mrs Page, he was told that she had just "stepped out" The chief planet of the system had just "stepped out" of its orbit—had gone swirling off into space in flat defiance of the law of gravitation! Mr Charlwood bounced angrily into his study, and there found—no matches on the mantelpiece!

When he could consider these abnormities with some degree of calmness, it seemed clear enough that something must be wrong with Mrs Page, and yet it could scarcely be her health, or she would not have gone out He resolved to demand an explanation in the morning

In the morning, however, she forestalled him by asking for a few days' leave She got the question out—very anxiously and gulpily, it is true—before he had time to open his inquiries, and, having heard it, he was dumb for half a minute, losing all hold of his ideas Imagine asking Jupiter to give an indefinite holiday to his largest moon!

When he found his voice, it was a voice of scandalised protest

"Mrs Page!" he said, "Mrs Page! Really I don't understand this extraordinary state of things. What do you mean by it?"

Mrs Page's mouth screwed down at the corners, and her eyes—rather red and heavy, he noticed now—grew pleading and watery. "I—I don't like to ask you, sir," said Mrs Page, "and I've put it off as long as I could, but I must ask you to let me go now. I'll see the cook, and——"

"But what, Mrs Page—why—what is the reason of this extraordinary—this—in short, Mrs Page, what is your explanation?"

"Well, sir, I didn't want to mention it, not wishing to trouble you, as you didn't know, but it's my mother."

"Your *mother*, Mrs Page?"

"Yes, sir." Mrs Page, tearful of eye, spoke with an air of meek apology for having been born of woman.

Mr Charlwood's surprise was complete. Mrs Page was certainly as old as himself, and *his* mother was no more than a recollection of childhood. There was something difficult to believe—something vaguely ridiculous—about Mrs Page's tardy retention of a mother.

"Then, what is it, Mrs Page? Why must you go because of your—your mother?"

"She's an invalid, sir, and—got nobody to look after her for the present, and I—I—oh, I don't know what I shall do!" And here Mrs Page broke down wholly and dabbed her red eyes with a fistful of wet pocket-handkerchief.

Mr Charlwood regarded his housekeeper with blank astonishment. She was exhibiting phenomena altogether foreign to his experience of planets. He asked more questions, and so the tale came out disconnectedly in sobs and jerks.

Mrs Page's mother had been left a widow only a little earlier than Mrs Page herself. Of late years she had become bedridden with spine trouble, and, to the worse of that, was nearly blind. Mrs Page had taken lodgings for her, and a woman had been paid to give her attention, but now the small savings of mother and daughter had at length given out, and the attendant was gone, and it was Mrs Page's present care to move her mother to cheaper lodgings, if such could be found, and in some way to attempt the impossible in the way of providing attendance on her. This must be the work of a few days, and Mrs Page humbly and tearfully, but with more insistence than she had ever dared to use to her employer before, protested that she really must go.

So much Mr Charlwood gathered from Mrs Page's faltering apologetics, but she said nothing of the weeks of deepening apprehension which had preceded the crisis, while the last few sovereigns, feebly reinforced by the last month's wages, had been melting fast, nor of the sleepless, sore-eyed nights given to helpless scheming of hopeless expedients. And Mr Charlwood was not the man to figure them in his imagination, for, in truth, that was not a quality wherewith he was vastly endowed. So he replied with dignified asperity

"Have you considered, Mrs Page," he said, "what—ah—extreme difficulty and inconvenience, and, in fact, positive annoyance, your absence would cause to the—to me?"

Yes, it seemed that Mrs Page had considered this, and was very sorry. But she had made arrangements to mitigate the inconvenience as far as possible, and—in short, she really must go. Mr Charlwood's amazement increased, he began to realise that his housekeeper was insisting—was growing firm—dictatorial. This was disconcerting—even alarming. Mr Charlwood suddenly grew aware that a vast deal more of his habitual well-being than he could risk depended wholly on his housekeeper, he positively could not afford to offend her. What was to be done?

The sooner this nuisance was got rid of the better. He reflected that when a similar difficulty arose in a matter of astronomy—when one planet of a system was observed to be distracted from its proper orbit by the influence of some unknown object outside the system, every astronomer turned his telescope in the direction of the unknown object in the hope of seeing it. It was all he had to guide him, and time was precious. He pushed his chair back and rose.

"Very well, Mrs Page," he said. "Get your bonnet at once. I will come with you and see this mother of yours!"

Mrs Page's red eyes opened wide. Hers was the amazement now. She stammered the beginnings of protest and then was silent. Could it be that Mr Charlwood doubted her word?

"I will see this mother of yours, Mrs Page!" he repeated. Mrs Page left the room with something of a woebegone flounce.

At the foot of the hill, where the houses stood smaller and thicker, a street led out of the main road, and another street led out of that. The end of this street was in another, wherein, if you turned to the right, you proceeded to I don't know where, and if you turned to the left, you could get no farther, because the street ended in a blind

wall At the end little house, next the blind wall, in a back room up the one flight of stairs, Mrs Page's old mother lay pallid and helpless and all but blind on a clean little bed on an iron bedstead with thin and staggering legs So Mr Charlwood and his housekeeper found her half an hour after their morning conversation Most things in the room were difficult to distinguish at first, for the blind was drawn, but the white of the bed was distinct enough, and on that another white—the old woman's face, hard and sharp and shocking, with eyes all but closed by lids that trembled unceasingly

"Is that you, Martha?" came a querulous voice from the bed "A nice time to leave me here like this, I must say, and not a soul to do a thing for me!"

Mrs Page bent and kissed the drawn face, quickly whispering something in which Mr Charlwood could distinguish nothing but his own name The twist of pain that abode ever on the grey face deepened at the words, and the old woman made what seemed a great effort to sit up, ending in a short groan

"And pray," came the sharp voice again, "pray, may I ask why Mr Charlwood is so good as to pay me this uninvited visit?"

Mrs Page stooped again and murmured some agonised entreaty, but the helpless woman in the bed went on

"I cannot pretend that the time is convenient," she said "And I hope it is not at your request, Martha Mr Charlwood is surely aware that the temporary circumstances which have induced you to accept a position in his household, and which have made it convenient for me to occupy these very inadequate lodgings, are not such as would warrant any attitude of patronage on his part"

Mrs Page left the bed-head and returned to Mr Charlwood by the door, pleading in whispers "Please go, sir," she begged "She doesn't know, she doesn't understand—I've never told her quite how things are, and she's been used to something different, pray forgive her, Mr Charlwood, and—and don't stay You see it's true I must do something, though I don't know what Please leave me with her"

Mr Charlwood found himself on the stairs, with some confused consciousness of a novel insignificance He had been ordered out of the room by his own housekeeper, and had meekly obeyed her His dignity being so far abused, it would suffer no more if he sat on the stairs to think it over, so he sat and tried But through all he was oppressed by the memory of that grey-white face, with the trembling eyelids, that lay in the little room behind him He had put himself

in a false position, that was clear And it would never do to part with Mrs Page—that would mean a dislocation of the domestic system beyond the horror of dreams But what could be done? He was unaccustomed to difficulties of this sort Could any astronomical analogy help him? When the outer planet Uranus was observed to be disturbed in its orbit by something still beyond it, that something was straightway included in the community of the planets and given its proper place and name in the Solar System Perhaps there might be a hint in that And—really, he was oddly impressed by that white face with the near-closed eyes Furthermore, he must no longer submit to the dictation of his housekeeper, he must retrieve his dignity and reassert his authority As to that he was resolved

He rose straightway and knocked at the door of the bedroom The door opened a little way, and Mrs Page's face appeared

"Just come here, if you please, Mrs Page," said Mr Charlwood, with firm authority, "and shut the door behind you"

Mrs Page complied, fearful and pleading of eye as ever

"I cannot waste more time waiting here, Mrs Page"

"N-no, sir"

"Therefore you will be so good as take certain instructions before I go, instructions which I must insist on your carrying out without delaying longer here Now as to the second spare bedroom, next your own, I wish a fire to be lighted there instantly, to air the room"

"Yes, sir—but won't you please tell——"

"I'll tell nobody but you, Mrs Page, and I expect you to see that my orders are obeyed Next, now, I wish you to take a note, which I will write, to Dr Greig"

"Y-yes, sir"

"In pursuance of instructions conveyed in that note, Dr Greig will send a trained nurse up to the house, who will stay there, and whom I shall expect you to accommodate suitably Also he will send *here* an invalid carriage, with attendants, which you must meet, and see without fail that your mother is placed in it with every care You understand—with every care"

"My mother, sir? O Mr Charlwood, you—don't—don't mean——"

"I mean, Mrs Page, that you are *not* to have the leave you applied for, to attend to your mother I refuse it, utterly I require your attendance at my house, and in order that you shall have no excuse for leaving it, your mother is to occupy the room which I have re-

quested you to have aired at once That is all, Mrs Page, except that I shall be glad of pen and ink, if I am to write the note to Dr Greig "

" O Mr Charlwood—Mr Charlwood, I shall pray for you night and day ! "

" I shall need it—I shall need it, Mrs Page, if my claret is to be frozen and boiled alternately, and the wrong soap put in the bath-room, while you are running about visiting your mother ! "

" And oh, sir, after what she said, too——"

" Said ? What she said ? She never spoke to *me*, Mrs Page, as you must know And as to anything she may have said to you, do you suppose I should listen, or should remember it if I heard it ? Really, Mrs Page—really, you—ah—now *where* is that pen and ink ? "

That day the Charlwood system was worse disturbed than ever, and every orbit was irregular No stellar system can endure the sudden introduction of two new planets and a frequent comet—Dr Greig was surprisingly like a comet—without some temporary disturbance of its arrangements So that Mr Charlwood found the observatory a welcome refuge from the turmoil, and went there early He went there early, looked up, and saw a marvel For there in the heavens stood and twinkled a new star—a star where no star had been before Truly indeed it was a new star—one of those stars that open out suddenly in the vastness above and there remain to puzzle the learned

If I were an astronomer like Mr Charlwood I would offer you some theory of these new stars , as it is, I can only tell you the facts of this, Mr Charlwood's one scientific discovery

Of course other astronomers saw the star too, that night, and carefully noted its exact position , but it was Mr Charlwood who got his letter into the newspapers first—he took a cab to all the offices and himself dropped a report at each—and so they called the star after him It was strictly called Charlwood with a number which I cannot tell you, being no astronomer, but generally it was Charlwood, simply , and it was Mr Charlwood's joy to know that he had not lived in vain

Mrs Page's mother died not very long after her removal, and the nurse went away And now I believe even Mr Charlwood himself has been dead some time , but his star twinkles steadily in the place where it first added its tiny light to the sparkling sky.



## JOIE-DE-LOUP : THE STORY OF A CARAVAN

**T**HE men came for Père Galillée almost as soon as the sun was up, and Joie-de-Loup, quaking upon a bed of straw, heard question and answer and all their angry argument. Others, too, came from neighbouring caravans and stood half-dressed about the father of the acrobats. La Souris was there, and Margot in a shawl of tinsel, and Pantalone in boots and breeches, and Lulu, so clever upon the tight-wire, and all together, in sacks and rags, and even in their gold and spangles, they implored pity for Père Galillée.

"What has he done, monsieur, that you treat him thus?"

"Is not the land free that any man may use it?"

"Twenty years, I remember, we have pitched a tent on this field and none denied us. What new law drives poor people out?"

"He is here, Père Galillée, and all the world knows he is an honest man. What does the law want with him, monsieur?"

"To the devil with the justice which takes the bread out of an old man's mouth! I am old and he is young, sergeant. Take me, if you please."

But Detolda, who mimicked the bass at the opera when the cabaret permitted him to mimic any one at all, cried angrily.

"I go to the President, monsieur! I appeal to the justice of my countryman!"

There were two sergents-de-ville by Père Galillée's caravan, and they laughed good-humouredly at the angry singer.

"Let the President know that you are coming and he will send you some soap, friend. You others go away while you can. We do not want caravans at Vincennes. We have enough wild beasts already."

They turned to Père Galillée and asked if he were ready. It had begun to snow, and the open fields of St Gervais were white and wet already in the morning sun. Joie-de-Loup, shivering with cold,

could remember no parallel to this in all the six years he had followed Père Galillée and learned to call him father True, he was but ten years old, and "ten years old" is little given to deduction Joie-de-Loup, fearing that the men were about to take Père Galillée to some distant country, but more especially discerning in their silver lace and other insignia the badges of that "law" which the caravan named a terror, lay low in his bed of straw and covered his ears with the crisp blades It was better not to see, he said, he could remember a very distant day when night and a gentle hand were the end of all things, of joy and tears and trouble But that was long ago It was rare now for him to recall it, and the faces of the distant years were forgotten

The sergents-de-ville took Père Galillée to the Bureau of Police, and old Nanette went with him, limping upon her crutches "We have starved together and slaved together, and now we will go to prison together," said she The grave courtesy of the gendarmes, their proffered assistance alike she despised "I am old and I am lame, but I can walk as fast as a sergent-de-ville, and more uprightly," said she, and with other sharp witticisms provoked the officers La Souris, however, wept bitterly, and Margot, in her shawl of tinsel, asked vainly what every one thought of Paris now It remained for Detolda, the bass, to console them, and this he did with the promise of a triumph at the opera and an interview with the President—all to be speedily accomplished after a visit to the dram-shop

Joie-de-Loup crept out of his hiding-place when a neighbouring clock was striking eleven, and, according to his habit, he began to turn somersaults and to walk to and fro upon his hands, practising those exercises which won him bread from the shabby circus He was very hungry, but some one, he said, would give him breakfast presently The waste ground beyond the Boulevard Davoust, where the caravans were halted, looked almost picturesque in its mantle of crisp snow and its border of whitened trees Paris herself, that city which had been the jugglers' Mecca for so many weeks of promise, lay beyond the barrier, a medley of spires and roofs and towering buildings and looming snow-grey sky Hither, from Boissy, had Père Galillée driven last night to reap the Christmas harvest at the feasting city's gate "We shall fill our pockets there, my children," said he, "and then for the hills and the sunshine Let each one do his best that Paris may applaud him It is cold here—my own Bayonne is

far away, but we shall return as the swallow to the South, we shall return and our hearts will be light "

The jugglers believed him, and their hearts were light as he bade them to be. Even Pantalone, mimic most melancholy, was heard to say that they buried you for nothing if you died of starvation in Paris. La Souris furbished up her spangles and talked sagely of rich Americans and other guileless travellers. Detolda sang all day in a strident voice which passion and absinthe reduced at eventide to the echo of a whisper. It remained for Joie-de-Loup to stand apart and ask what this Paris might mean to him, this city of all the fables, this goal of a *jongleur's* life. More bread, perhaps, and yet more work? A bed to sleep in sometimes, if it were but a bed of rags. And other children to see, and houses to peep into, and shops to stand before—and, it might be, a little kindness if the booth were filled. Ah! these dreams, that a sergent-de-ville should destroy them so utterly with a harsh word and a sheet of paper! Père Galillée was in prison next morning, and the troupe was scattered as chaff to the wind.

The child was not sure of it at first when he quitted his bed and went from caravan to caravan, a beggar of bread and the tidings. Detolda also had gone away—to the tavern as usual—and La Souris's tears were dried up. Indeed, that bewitching *servetta* was determined already to offer her services to the Café de la Gloire in the Rue de Belleville, and began to trim a hat for that very purpose. A few of the clowns and the stable-boys loitered about the smaller caravans, but indolently, as those who lacked a master. The half-starved horses, of whom none thought, came readily to Joie-de-Loup's call and rubbed their noses in his cold hand. They seemed to say, "We understand, we, too, are forgotten." Everywhere the *débâcle* was supreme, so that even the great tent remained unpacked and old Galillée's tiger had been denied the sunlight.

Joie-de-Loup went from group to group asking such questions as a child will and receiving such answers as impatience dictates. La Souris, anxious to finish a hat which would captivate the impresario of the neighbouring café, sent him about his business sharply, and all that the spangled angel condescended to say left him but little wiser in the end. "I don't know and I don't care!" exclaimed the bewitching one peevishly, "he may come to-day and he may come to-morrow, and he may never come at all, and whether he comes or stays it's all the same to me. I'm sick of your Père Galillée and your

'houp-la' and all the rest of it with two dozen in the front benches, and I'm going to be a lady Now, you run off about your business and don't try my temper—for the good God knows what I won't do when I'm provoked "

Joie-de-Loup ran off, for La Souris had a heavy hand , and, finding old Pantalone with a glass of beer and a roll of bread, he asked where Mother Nanette had gone and what kept the father of the circus To which the melancholy pantaloone replied that the law was as uncertain as life itself, and that all things and all men must ultimately perish—" wherefore," he asked, " why laugh when the end is tears ! " To which he added the clear explanation that time would tell, and that nothing was real, as witness Detolda, who declared himself in his ballad to be a troubadour, while in reality he was nothing but a wine-vat " You say you are hungry, my child—very well, think that you have eaten, and when forty, fifty years have passed you will not care whether you starved or ate to-day I know, and I am an old man The world kicks me, but the stage teaches me where to put the pads on "

He ate the last crust with the words and drained the bottle to the dregs Joie-de-Loup, watching him with hungry eyes, and appraising no philosophy except that of hot coffee and good bread, went on to the others and began to speak again of Père Galilée and of old Mother Nanette, who had forgotten his breakfast The men heard him sympathetically, but their own wallets were empty and they did not know when they would eat again " Go and turn somersaults for the people of Paris, and you will get sous," they said , " you are clever, Joie-de-Loup, and may feed us all Why do you idle about here when we are hungry ? "

The more brutal among them drove him out with straps, and he, understanding little of it all except that he was hungry and that old Nanette had forgotten him, went out toward the barrier and entered the great city, there to throw a childish glove to fortune It was mid-day by this time, upon the eve of Christmas, and the barrier was blocked by the carts of those who carried their goods to the greater markets Such a press of people Joie-de-Loup had never seen before. The heaped-up vegetables, the sacks of flour, the poultry, the eggs upon the carts, would feed all the peoples of the earth, he thought And he who was so small, who needed so little, went starving in the midst of such a harvest Joie-de-Loup could not make anything of

that Hard as the life of the show had been, it always gave him bread  
But these passers-by, they did not seem to know that he lived

He pushed his way into the throng and began to cry as he had been taught, " I am Joie-de-Loup, the friend of Columbine," and after that he did the tricks he had been taught, turning somersaults upon his hands or walking upon them, or bending his body in strange contortions But none heeded him, none threw a sou, while many cursed him, and a burly farmer sent him headlong with a kick

Joie-de-Loup began to think that Père Galillée was right after all when he had said, " It is I who give you bread , without me you are sheep for the shearing, children of the barns, starvelings ! "

Had Père Galillée been here, all would be well, he imagined The people listened to him and threw sous , but Joie-de-Loup they would not listen to , and they drove him out with blows, while a sergent-de-ville, who crossed the road with cane uplifted, sent the lad flying at all the speed of his little legs towards the Place de la République and the heart of Paris

He was very hungry , but the chase warmed him, and the sights he saw contributed to a child's wonder and delight For nearly six years now he had been the servant of Galillée and the circus Hours of freedom he had not known nor days of liberty It is true that the eve of Christmas always found the caravans at the gate of Paris , but hitherto the little acrobat had been left behind at Neuilly or Boissy St Leger, or in some neighbouring hamlet His triumphs were reserved for the village fêtes in the smaller towns, or the courtyards of the wayside hostelries " Paris is for the great artists," old Père Galillée had said , " some day, my child, you shall have Paris at your feet , but not yet—not yet " If La Souris and Margot and the melancholy Pantalone laughed aside when these lofty sentiments were uttered, Joie-de-Loup understood none of them For him the father of the troupe was lord and king, infallible, all-wise There had been, he knew, years of his life which Père Galillée had not guided He wondered sometimes how he found bread in those days , nor could memory help him to understand how he managed to live until he fell in with the caravan Indeed, his mind played strange tricks with him, so that there were epochs in his life which he remembered very clearly and others which were entirely forgotten And he always worked backward in his recollections from these great days, when his cleverness won so much applause, to less glorious hours, when he was little more

than the scullion of the troupe, the back for every rod, the ear for every oath. From such lesser hours, still working backward, he could recall one unforgettable night, which he thought must surely have been the first in all his life. For in this picture of the past, his brain showed him a dark road and a wood behind it, and a fire whose ebbing light shone red amid the trees. He heard again the laughter of women in the wood, the deep voices of men, the baying of a watch-dog. He stood at the fireside, and oddly-dressed figures came out of ghostly caravans, while a young girl stooped to kiss his forehead. And then oblivion. The mind carried him on that backward path no farther. All else was blurred in the mists of a past greatly remote. If there were nights when he beheld another figure in his sleep, he could neither focus nor name it. And yet its presence haunted him, and he welcomed it, though whence it came he knew not, and memory would not tell. Often in the years of the nomad's life the striving mind would ask of those about him if a woman had brought him to the wood, but they answered that he had come alone, a waif gathered by the roadside. And Père Galillée would tell no more. He discouraged such talk.

Joie-de-Loup asked these questions again while his fleeting steps carried him yet farther into the enveloping city. The noisy waggons, the cabs driven headlong, the soldiers at their drill, the shops dressed for the fête, made for him a wonder-picture surpassing all imagination. Here were countless people and they were richer than Père Galillée. That was a fact with which his mind could not grapple. If these wealthy folk coming out of the splendid houses could set up shops and drive such carriages, surely they could spare a little loaf for Joie-de-Loup. Very hungry by this time, and craving for food, he stood before a baker's shop and feasted his eyes upon the well-browned bread. With such a loaf as that one at which he pointed a child's finger, with such a loaf and a draught of milk—it might be hot milk, Joie-de-Loup said—he would ask for nothing more until evening came and Mother Nanette returned to prepare his supper. Ah, that was the puzzle of it, that Madame Nanette should have forgotten Joie-de-Loup! Sometimes in his walk he asked himself if he would ever see any of the circus people again. It began to be plain to him, he knew not by what argument of circumstance, that another link in the chain of his life had snapped that morning. He would not have admitted so much to any one, for a miracle alone, he thought, could separate him from Père Galillée. But as he followed the busy boulevard—

on, he cared not whither—the old pages were being blotted out one by one, the old habits forgotten so quickly, that at last in a great square, unlike anything the pilgrimage had shown him, Joie-de-Loup ceased to run, and knew that once in his life, at least, he had stood on that very spot before

It was the Place de la République, in the busy hour of the day, and it reflected all the Christmas activity that Paris can show. There were many soldiers marching in and out of the great barracks at the corner of the Rue de la Douane, while groups of impatient pedestrians found shelter beneath the porticos of shops and theatres. Blinding flakes were whirled by the wintry blast, but Joie-de-Loup stood unconscious of them. For him the picture was entrancing beyond any in his memory. Just to behold the whirling life, to hear the trumpets, to see the cabmen crack their whips—surely any one might come to Paris for that alone. And the arc-lamps glowing in the looming mists, the hurrying throngs, the shops, the houses! Joie-de-Loup could have seen nothing like it, and yet, standing at the cross-roads in a maze of doubt and wonder, he knew that there had been a day far back in the years when that very square typified a city for him, and he had clung to an outstretched hand which led him hither and thither among the carriages and the people. The truth affrighted him. He awoke as from a spell, and darting beneath the horses' heads, now running, now stooping, now saying that surely he would never see Père Gallée again, he reached the Rue de Turbigo and left that whirlpool of life behind him.

The memory of children is unstable and capricious, it takes and leaves apparently at hazard, safeguarding this scene to reject that, giving import to things of no importance, allowing to be forgotten, throwing back into oblivion, the scenes that the years would gladly recall. Joie-de-Loup knew that he had crossed the Place de la République many times in a remote life. He knew that this very Rue de Turbigo, down which he went with timid steps, had played some part in a forgotten day, and yet he could add nothing to the bare recognition. All that he did henceforth was done upon an impulse. The shops, the cafés, the distant view of an open space, and a church which dominated it, hurried him onward as to some sure haven. Knowing little of the wonder which his mind wrought, he began to see at length that impulse carried him, not to any shop or house, but to the church itself, whose arches his brain was rebuilding, the figures

in whose windows he thought that he could fill in No longer irresolute, directed as by an unseen hand, Joie-de-Loup crossed the busy street and entered the church of St Eustache

It was the eve of Christmas, and many had gathered for the afternoon service in that edifice which fashion and the *opéra bouffe* alike had learned to patronise Here, cheek-by-jowl with chorus-girls, were great dames from the west—the Faubourg St Germain rubbing shoulders with the Boulevard St Martin, and both the victims of the clacking *cocher's* tongue without Women whose sables had cost eight hundred pounds condescended to kneel side by side with the work-girls whose clothes were far from being worth eight hundred sous When Joie-de-Loup entered the church the high altar was ablaze with lights, and all the pomp and splendour of a gorgeous ritual helped him to awe Golden-robed priests moved majestically in that splendid sanctuary Clouds of sweet-smelling incense floated upward to the angels above the choir He heard enthralling music—those voices which yesterday had won applause from the galleries of the theatre—he beheld the twinkling lamps, the gated chapels, the pictured mysteries, the kneeling worshippers And this scene he knew, this, beyond all, memory gave back to him How often had he come to this very place in the years of the forgotten life, how often had he come here before fate drove him out to the woods and the reddening fire and the nomad's caravan It might even be that he had gone from this very door straight to Mother Nanette and the silver spangles And yet he did not think so The figure of the dream intervened between him and the truth, he knew not how

He had entered the church at a venture, awed by a pompous beadle who waved a wand as though he were about to do a conjuring trick While obsequious officials showed the great dames to their chairs, none came forward to welcome Joie-de-Loup or to offer him their sanctimonious hospitality Perchance, had he been less sure of his goal, the portly beadle would have made a capture and Joie-de-Loup been sent to the snows again But instinct led him now with unyielding hand Regardless of the whispered reproof, the quick steps behind him, the turning heads, he halted not in nave or aisle, but, passing down the whole length of the church, he entered that chapel by the choir to which the figure beckoned him, and kneeling there he uttered a name which had not passed his lips for six long years.



"Susanne!" he cried, so loudly that many turned to stare at him, "where is Susanne?"

A woman rose at the words and stood for a little while holding to the rail of the chair before her. Beadles, consulting in whispers at the chapel gate, advanced together to lead Joie-de-Loup away, but the woman was before them, and without a cry or a word she thrust her hand into that of the child and hurried from the church. Joie-de-Loup knew not why he went with her, or how it was that she wished to take him from the warmth and the light, but impulse said, "Go," and his feet did not refuse him. In the street, where the snow fell and the carriages were waiting and the great throngs hurried on, the woman stooped to cover the child with her furs and to draw him closer to her.

"René!" she cried at last. "Oh, my God! it is René!"

He did not answer her, but waited as one awakened from a trance of sleep while her footman called the carriage and set him upon the soft cushions and wrapped warm rugs about him. "Ten years old" had no brains for this, nor could he reason with it. All that was happening to him, the journey, the soft words, the warmth, the tenderness, all these things were the gift of the angels floating on the clouds of incense in the church he had left. And yet the figure was real. He had seen it so often, had asked for it so many days. And now it was there beside him, he could see the tears in the woman's eyes, could feel her soft hand in his own—her lips pressed to his as though never would they release them. She ceased not to call him "René, my child, my darling!"

Joie-de-Loup, silent for many minutes, turned to her at last and answered—"Mother!" And in that word the missing years were given back to him, and he knew that he lived in the days before the wood

. . . . .

Old Père Gallée, his hat full of crowns, made a great feast that night, and ministered generously to the children who had mourned him.

"Let us eat and drink," said he, "for a great artist is given back to the world."

SIR ARTHUR QUILLER-COUCH ("Q")

B 1863

## THE ROLL-CALL OF THE REEF

"YES, sir," said my host the quarryman, reaching down the relics from their hook in the wall over the chimney-piece, "they've hung here all my time, and most of my father's. The women won't touch 'em, they're afraid of the story. So here they'll dangle, and gather dust and smoke, till another tenant comes and tosses 'em out o' doors for rubbish. Whew! 'tis coarse weather."

He went to the door, opened it, and stood studying the gale that beat upon his cottage front, straight from the Manacle Reef. The rain drove past him into the kitchen, aslant like threads of gold silk in the shine of the wreck-wood fire. Meanwhile, by the same fire-light, I examined the relics on my knee. The metal of each was tarnished out of knowledge. But the trumpet was evidently an old cavalry trumpet, and the threads of its parti-coloured sling, though frayed and dusty, still hung together. Around the side-drum, beneath its cracked brown varnish, I could hardly trace a royal coat-of-arms and a legend running—*Per Mare per Terram*—the motto of the Marines. Its parchment, though coloured and scented with wood-smoke, was limp and mildewed, and I began to tighten up the straps—under which the drum-sticks had been loosely thrust—with the idle purpose of trying if some music might be got out of the old drum yet.

But as I turned it on my knee, I found the drum attached to the trumpet-sling by a curious barrel-shaped padlock, and paused to examine this. The body of the lock was composed of half-a-dozen brass rings, set accurately edge to edge, and, rubbing the brass with my thumb, I saw that each of the six had a series of letters engraved around it.

I knew the trick of it, I thought. Here was one of those word padlocks, once so common, only to be opened by getting the rings to spell a certain word, which the dealer confides to you.

My host shut and barred the door, and came back to the hearth

" 'Twas just such a wind—east by south—that brought in what you've got between your hands Back in the year 'nine, it was, my father has told me the tale a score o' times You're twisting round the rings, I see But you'll never guess the word Parson Kendall, he made the word, and locked down a couple o' ghosts in their graves with it, and when his time came, he went to his own grave and took the word with him "

" Whose ghosts, Matthew ? "

" You want the story, I see, sir My father could tell it better than I can He was a young man in the year 'nine, unmarried at the time, and living in this very cottage, just as I be That's how he came to get mixed up with the tale "

He took a chair, lit a short pipe, and went on, with his eyes fixed on the dancing violet flames

" Yes, he'd ha' been about thirty years old in January of the year 'nine The storm got up in the night o' the twenty-first o' that month My father was dressed and out long before daylight, he never was one to 'bide in bed, let be that the gale by this time was pretty near lifting the thatch over his head Besides which, he'd fenced a small 'taty-patch that winter, down by Lowland Point, and he wanted to see if it stood the night's work He took the path across Gunner's Meadow—where they buried most of the bodies afterwards The wind was right in his teeth at the time, and once on the way (he's told me this often) a great strip of oreweed came flying through the darkness and fetched him a slap on the cheek like a cold hand But he made shift pretty well till he got to Lowland, and then had to drop upon hands and knees and crawl, digging his fingers every now and then into the shingle to hold on, for he declared to me that the stones, some of them as big as a man's head, kept rolling and driving past till it seemed the whole foreshore was moving westward under him The fence was gone, of course, not a stick left to show where it stood, so that, when first he came to the place, he thought he must have missed his bearings My father, sir, was a very religious man, and if he reckoned the end of the world was at hand—there in the great wind and night, among the moving stones—you may believe he was certain of it when he heard a gun fired, and, with the same, saw a flame shoot up out of the darkness to windward, making a sudden fierce light in all the place about All he could find to think or say was, ' The Second Coming—The Second Coming! The Bridegroom

cometh, and the wicked He will toss like a ball into a large country ! ' and being already upon his knees, he just bowed his head and 'bided, saying this over and over

" But by'm-by, between two squalls, he made bold to lift his head and look, and then by the light—a bluish colour 'twas—he saw all the coast clear away to Manacle Point, and off the Manacles, in the thick of the weather, a sloop-of-war with top-gallants housed driving stern foremost towards the reef It was she, of course, that was burning the flare My father could see the white streak and the ports of her quite plain as she rose to it, a little outside the breakers, and he guessed easy enough that her captain had just managed to wear ship, and was trying to force her nose to the sea with the help of her small bower anchor and the scrap or two of canvas that hadn't yet been blown out of her But while he looked, she fell off, giving her broad-side to it foot by foot, and drifting back on the breakers around Carn dû and the Varses The rocks lie so thick thereabouts, that 'twas a toss up which she struck first, at any rate, my father couldn't tell at the time, for just then the flare died down and went out

" Well, sir, he turned then in the dark and started back for Coverack to cry the dismal tidings—though well knowing ship and crew to be past any hope, and as he turned, the wind lifted him and tossed him forward ' like a ball,' as he'd been saying, and homeward along the foreshore As you know, 'tis ugly work, even by daylight, picking your way among the stones there, and my father was prettily knocked about at first in the dark But by this 'twas nearer seven than six o'clock, and the day spreading By the time he reached North Corner, a man could see to read print, hows'ever he looked neither out to sea nor towards Coverack, but headed straight for the first cottage—the same that stands above North Corner to-day A man named Billy Ede lived there then, and when my father burst into the kitchen bawling, ' Wreck ! wreck ! ' he saw Billy Ede's wife, Ann, standing there in her clogs, with a shawl thrown over her head, and her clothes wringing wet

" ' Save the chap ! ' says Billy Ede's wife, Ann ' What d'ee mean by crying stale fish at that rate ? '

" ' But 'tis a wreck, I tell 'ee I've a-zeed 'n ! '

" ' Why, so 'tis,' says she, ' and I've a-zeed 'n too, and so has every one with an eye in his head '

" And with that she pointed straight over my father's shoulder, and he turned , and there, close under Dolor Point, at the end of Coverack town, he saw another wreck washing, and the point black with people, like emmets, running to and fro in the morning light While he stood staring at her, he heard a trumpet sounded on board, the notes coming in little jerks, like a bird rising against the wind , but faintly, of course, because of the distance and the gale blowing—though this had dropped a little

" ' She's a transport,' said Billy Ede's wife, Ann, ' and full of horse soldiers, fine long men When she struck they must ha' pitched the hosses over first to lighten the ship, for a score of dead hosses had washed in afore I left, half an hour back An' three or four soldiers too—fine long corpses in white breeches and jackets of blue and gold I held the lantern to one Such a straight young man '

" My father asked her about the trumpeting

" ' That's the queerest bit of all She was burnin' a light when me an' my man joined the crowd down there All her masts had gone , whether they carried away, or were cut away to ease her, I don't rightly know Anyway, there she lay 'pon the rocks with her decks bare Her keelson was broke under her and her bottom sagged and stove, and she had just settled down like a sitting hen—just the leastest list to starboard , but a man could stand there easy They had rigged up ropes across her, from bulwark to bulwark, an' beside these the men were mustered, holding on like grim death whenever the sea made a clean breach over them, an' standing up like heroes as soon as it passed The captain an' the officers were clinging to the rail of the quarter-deck, all in their golden uniforms, waiting for the end as if 'twas King George they expected There was no way to help, for she lay right beyond cast of line, though our folk tried it fifty times And beside them clung a trumpeter, a whacking big man, an' between the heavy seas he would lift his trumpet with one hand, and blow a call , and every time he blew, the men gave a cheer. There (she says)—hark 'ee now—there he goes agen ! But you won't hear no cheering any more, for few are left to cheer, and their voices weak Bitter cold the wind is, and I reckon it numbs their grip o' the ropes , for they were dropping off fast with every sea when my man sent me home to get his breakfast Another wreck, you say ? Well, there's no hope for the tender dears, if 'tis the Manacles. You'd better run down and help yonder , though 'tis little help any man

can give Not one came in alive while I was there The tide's flowing, an' she won't hold together another hour, they say'

" Well, sure enough, the end was coming fast when my father got down to the point Six men had been cast up alive, or just breathing—a seaman and five troopers The seaman was the only one that had breath to speak, and while they were carrying him into the town, the word went round that the ship's name was the *Despatch*, transport, homeward bound from Corunna, with a detachment of the 7th Hussars, that had been fighting out there with Sir John Moore The seas had rolled her farther over by this time, and given her decks a pretty sharp slope, but a dozen men still held on, seven by the ropes near the ship's waist, a couple near the break of the poop, and three on the quarter-deck Of these three my father made out one to be the skipper, close by him clung an officer in full regimentals—his name, they heard after, was Captain Duncanfield, and last came the tall trumpeter, and if you'll believe me, the fellow was making shift there, at the very last, to blow 'God save the King' What's more, he got to 'Send us victorious' before an extra big sea came bursting across and washed them off the deck—every man but one of the pair beneath the poop—and he dropped his hold before the next wave, being stunned, I reckon The others went out of sight at once, but the trumpeter—being, as I said, a powerful man as well as a tough swimmer—rose like a duck, rode out a couple of breakers, and came in on the crest of the third The folks looked to see him broke like an egg at their very feet, but when the smother cleared, there he was, lying face downward on a ledge below them, and one of the men that happened to have a rope round him—I forget the fellow's name, if I ever heard it—jumped down and grabbed him by the ankle as he began to slip back Before the next big sea, the pair were hauled high enough to be out of harm, and another heave brought them up to grass Quick work, but master trumpeter wasn't quite dead, nothing worse than a cracked head and three staved ribs In twenty minutes or so they had him in bed, with the doctor to tend him

" Now was the time—nothing being left alive upon the transport—for my father to tell of the sloop he'd seen driving upon the Manacles And when he got a hearing, though the most were set upon salvage, and believed a wreck in the hand, so to say, to be worth half-a-dozen they couldn't see, a good few volunteered to start off with him and

have a look They crossed Lowland Point, no ship to be seen on the Manacles, nor anywhere upon the sea One or two was for calling my father a liar 'Wait till we come to Dean Point,' said he Sure enough on the far side of Dean Point they found the sloop's main-mast washing about with half-a-dozen men lashed to it, men in red jackets, every mother's son drowned and staring, and a little farther on, just under the Dean, three or four bodies cast up on the shore, one of them a small drummer-boy, side-drum and all, and, near by, part of a ship's gig, with H M S *Primrose* cut on the sternboard From this point on, the shore was littered thick with wreckage and dead bodies—the most of them Marines in uniform, and in Godrevy Cove, in particular, a heap of furniture from the captain's cabin, and amongst it a water-tight box, not much damaged, and full of papers, by which, when it came to be examined next day, the wreck was easily made out to be the *Primrose*, of eighteen guns, outward bound from Portsmouth, with a fleet of transports for the Spanish War, thirty sail, I've heard, but I've never heard what became of them Being handled by merchant skippers, no doubt they rode out the gale, and reached the Tagus safe and sound Not but what the captain of the *Primrose* (Mein was his name) did quite right to try and club-haul his vessel when he found himself under the land, only he never ought to have got there, if he took proper soundings But it's easy talking

"The *Primrose*, sir, was a handsome vessel—for her size, one of the handsomest in the King's service—and newly fitted out at Plymouth Dock So the boys had brave pickings from her in the way of brass-work, ship's instruments, and the like, let alone some barrels of stores not much spoiled They loaded themselves with as much as they could carry, and started for home, meaning to make a second journey before the preventive men got wind of their doings, and came to spoil the fun But as my father was passing back under the Dean, he happened to take a look over his shoulder at the bodies there 'Hullo!' says he, and dropped his gear, 'I do believe there's a leg moving!' and running fore, he stooped over the small drummer-boy that I told you about The poor little chap was lying there, with his face a mass of bruises, and his eyes closed—but he had shifted one leg an inch or two, and was still breathing So my father pulled out a knife, and cut him free from his drum—that was lashed on to him with a double turn of Manilla rope—and took him up and carried him along here, to this very room that we're sitting in He lost a

good deal by this, for when he went back to fetch the bundle he'd dropped, the preventive men had got hold of it, and were thick as thieves along the foreshore, so that 'twas only by paying one or two to look the other way that he picked up anything worth carrying off—which you'll allow to be hard, seeing that he was the first man to give news of the wreck

"Well, the inquiry was held, of course, and my father gave evidence, and for the rest they had to trust to the sloop's papers, for not a soul was saved besides the drummer-boy, and he was raving in a fever, brought on by the cold and the fright. And the seaman and the five troopers gave evidence about the loss of the *Despatch*. The tall trumpeter, too, whose ribs were healing, came forward and kissed the Book, but somehow his head had been hurt in coming ashore, and he talked foolish-like, and 'twas easy seen he would never be a proper man again. The others were taken up to Plymouth, and so went their ways, but the trumpeter stayed on in Coverack, and King George, finding he was fit for nothing, sent him down a trifle of a pension after a while—enough to keep him in board and lodging, with a bit of tobacco over

"Now the first time that this man—William Tallifer he called himself—met with the drummer-boy, was about a fortnight after the little chap had bettered enough to be allowed a short walk out of doors, which he took, if you please, in full regimentals. There never was a soldier so proud of his dress. His own suit had shrunk a brave bit with the salt water, but into ordinary frock an' corduroys he declared he would not get, not if he had to go naked the rest of his life, so my father—being a good-natured man, and handy with the needle—turned to and repaired damages with a piece or two of scarlet cloth cut from the jacket of one of the drowned Marines. Well, the poor little chap chanced to be standing, in this rig-out, down by the gate of Gunner's Meadow, where they had buried two score and over of his comrades. The morning was a fine one, early in March month, and along came the cracked trumpeter, likewise taking a stroll

"'Hullo!' says he, 'good mornin'! And what might you be doin' here?'

"'I was a-wishin',' says the boy, 'I had a pair o' drum-sticks. Our lads were buried yonder without so much as a drum tapped or a musket fired, and that's not Christian burial for British soldiers.'





Ellis & Fry

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“ ‘ Phut ! ’ says the trumpeter, and spat on the ground , ‘ a parcel of Marines ! ’

“ The boy eyed him a second or so, and answered up ‘ If I’d a tab of turf handy, I’d bung it at your mouth, you greasy cavalryman, and learn you to speak respectful of your betters The Marines are the handiest body o’ men in the service ’

“ The trumpeter looked down on him from the height of six foot two, and asked ‘ Did they die well ? ’

“ ‘ They died very well There was a lot of running to and fro at first, and some of the men began to cry, and a few to strip off their clothes But when the ship fell off for the last time, Captain Mein turned and said something to Major Griffiths, the commanding officer on board, and the Major called out to me to beat to quarters It might have been for a wedding, he sang it out so cheerful We’d had word already that ’twas to be parade order , and the men fell in as trim and decent as if they were going to church One or two even tried to shave at the last moment The Major wore his medals One of the seamen, seeing I had work to keep the drum steady—the sling being a bit loose for me, and the wind what you remember—lashed it tight with a piece of rope , and that saved my life afterwards, a drum being as good as a cork until it’s stove I kept beating away until every man was on deck , and then the Major formed them up and told them to die like British soldiers, and the chaplain read a prayer or two—the boys standin’ all the while like rocks, each man’s courage keeping up the others’ The chaplain was in the middle of a prayer when she struck In ten minutes she was gone That was how they died, cavalryman ’

“ ‘ And that was very well done, drummer of the Marines What’s your name ? ’

“ ‘ John Christian ’

“ ‘ Mine’s William George Tallifer, trumpeter of the 7th Light Dragoons—the Queen’s Own I played “ God save the King ” while our men were drowning Captain Duncanfield told me to sound a call or two, to put them in heart , but that matter of “ God save the King ” was a notion of my own I won’t say anything to hurt the feelings of a Marine, even if he’s not much over five foot tall , but the Queen’s Own Hussars is a tearin’ fine regiment As between horse and foot, ’tis a question o’ which gets the chance All the way from Sahagun to Corunna ’twas we that took and gave the knocks—at

Mayorga and Rueda, and Bennyventy' (The reason, sir, I can speak the names so pat, is that my father learnt 'em by heart afterwards from the trumpeter, who was always talking about Mayorga and Rueda and Bennyventy) 'We made the rear-guard, under General Paget, and drove the French every time, and all the infantry did was to sit about in wine-shops till we whipped 'em out, an' steal an' straggle an' play the tomfool in general And when it came to a stand-up fight at Corunna, 'twas the horse, or the best part of it, that had to stay sea-sick aboard the transports, an' watch the infantry in the thick o' the caper Very well they behaved too, 'specially the 4th Regiment, an' the 42nd Highlanders, an' the Dirty Half-Hundred Oh, ay, they're decent regiments, all three But the Queen's Own Hussars is a tearin' fine regiment So you played on your drum when the ship was goin' down? Drummer John Christian, I'll have to get you a new pair o' drum-sticks for that'

"Well, sir, it appears that the very next day the trumpeter marched into Helston, and got a carpenter there to turn him a pair of box-wood drumsticks for the boy And this was the beginning of one of the most curious friendships you ever heard tell of Nothing delighted the pair more than to borrow a boat off my father and pull out to the rocks where the *Primrose* and the *Despatch* had struck and sunk, and on still days 'twas pretty to hear them out there off the Manacles, the drummer playing his tattoo—for they always took their music with them—and the trumpeter practising calls, and making his trumpet speak like an angel But if the weather turned roughish, they'd be walking together and talking, leastwise, the youngster listened while the other discoursed about Sir John's campaign in Spain and Portugal, telling how each little skirmish befell, and of Sir John himself, and General Baird, and General Paget, and Colonel Vivian, his own commanding officer, and what kind of men they were, and of the last bloody stand-up at Corunna, and so forth, as if neither could have enough

"But all this had to come to an end in the late summer, for the boy, John Christian, being now well and strong again, must go up to Plymouth to report himself 'Twas his own wish (for I believe King George had forgotten all about him), but his friend wouldn't hold him back As for the trumpeter, my father had made an arrangement to take him on as lodger as soon as the boy left, and on the morning fixed for the start, he was up at the door here by five o'clock, with his

trumpet slung by his side, and all the rest of his belongings in a small valise. A Monday morning it was, and after breakfast he had fixed to walk with the boy some way on the road towards Helston, where the coach started. My father left them at breakfast together, and went out to meat the pig, and do a few odd morning jobs of that sort. When he came back, the boy was still at table, and the trumpeter standing here by the chimney-place with the drum and trumpet in his hands, hitched together just as they be at this moment.

“ ‘ Look at this,’ he says to my father, showing him the lock, ‘ I picked it up off a starving brass-worker in Lisbon, and it is not one of your common locks that one word of six letters will open at any time. There’s *janus* in this lock, for you’ve only to make the rings spell any six-letter word you please and snap down the lock upon that, and never a soul can open it—not the maker, even—until somebody comes along that knows the word you snapped it on. Now, Johnny here’s goin’, and he leaves his drum behind him, for though he can make pretty music on it, the parchment sags in wet weather, by reason of the sea-water getting at it, an’ if he carries it to Plymouth, they’ll only condemn it and give him another. And, as for me, I shan’t have the heart to put lip to the trumpet any more when Johnny’s gone. So we’ve chosen a word together, and locked ‘em together upon that, and, by your leave, I’ll hang ‘em here together on the hook over your fireplace. Maybe Johnny’ll come back, maybe not. Maybe, if he comes, I’ll be dead an’ gone, an’ he’ll take ‘em apart an’ try their music for old sake’s sake. But if he never comes, nobody can separate ‘em, for nobody beside knows the word. And if you marry and have sons, you can tell ‘em that here are tied together the souls of Johnny Christian, drummer of the Marines, and William George Tallifer, once trumpeter of the Queen’s Own Hussars. Amen.’ ”

“ With that he hung the two instruments ‘pon the hook there, and the boy stood up and thanked my father and shook hands, and the pair went forth of the door, towards Helston.

“ Somewhere on the road they took leave of one another; but nobody saw the parting, nor heard what was said between them. About three in the afternoon the trumpeter came walking back over the hill, and by the time my father came home from the fishing the cottage was tidied up, and the tea ready, and the whole place shining like a new pin. From that time for five years he lodged here with my father, looking after the house and tilling the garden. And all the

while he was steadily failing, the hurt in his head spreading, in a manner, to his limbs. My father watched the feebleness growing on him, but said nothing. And from first to last neither spake a word about the drummer, John Christian, nor did any letter reach them, nor word of his doings.

"The rest of the tale you'm free to believe, sir, or not, as you please. It stands upon my father's words, and he always declared he was ready to kiss the Book upon it, before judge and jury. He said, too, that he never had the wit to make up such a yarn; and he defied any one to explain about the lock, in particular, by any other tale. But you shall judge for yourself.

"My father said that about three o'clock in the morning, April fourteenth, of the year 'fourteen, he and William Tallifer were sitting here, just as you and I, sir, are sitting now. My father had put on his clothes a few minutes before, and was mending his spiller by the light of the horn lantern, meaning to set off before daylight to haul the trammel. The trumpeter hadn't been to bed at all. Towards the last he mostly spent his nights (and his days too) dozing in the elbow-chair where you sit at this minute. He was dozing then (my father said) with his chin dropped forward on his chest, when a knock sounded upon the door, and the door opened, and in walked an upright young man in scarlet regimentals.

"He had grown a brave bit, and his face was the colour of wood-ashes, but it was the drummer John Christian. Only his uniform was different from the one he used to wear, and the figures "38" shone in brass upon his collar.

"The drummer walked past my father as if he never saw him, and stood by the elbow-chair and said

" 'Trumpeter, trumpeter, are you one with me?'

"And the trumpeter just lifted the lids of his eyes, and answered, 'How should I not be one with you, drummer Johnny—Johnny boy? If you come, I count while you march, I mark time until the discharge comes.'

" 'The discharge has come to-night,' said the drummer, 'and the word is Corunna no longer.' And stepping to the chimney-place he unhooked the drum and trumpet, and began to twist the brass rings of the lock, spelling the word aloud, so—C-O-R-U-N-A. When he had fixed the last letter, the padlock opened in his hand.

“ ‘ Did you know, trumpeter, that, when I came to Plymouth, they put me into a line regiment ? ’

“ ‘ The 38th is a good regiment,’ answered the old Hussar, still in his dull voice , ‘ I went back with them from Sahagun to Corunna At Corunna they stood in General Fraser’s division, on the right They behaved well ’

“ ‘ But I’d fain see the Marinys again,’ says the drummer, handing him the trumpet , ‘ and you, you shall call once more for the Queen’s Own Matthew,’ he says, suddenly, turning on my father—and when he turned, my father saw for the first time that his scarlet jacket had a round hole by the breast-bone, and that the blood was welling there—’ Matthew, we shall want your boat ’

“ Then my father rose on his legs like a man in a dream, while they two slung on, the one his drum, and t’other his trumpet He took the lantern and went quaking before them down to the shore, and they breathed heavily behind him , and they stepped into his boat, and my father pushed off

“ ‘ Row you first for Dolor Point,’ says the drummer So my father rowed them out past the white houses of Coverack to Dolor Point, and there, at a word, lay on his oars And the trumpeter, William Tallifer, put his trumpet to his mouth and sounded the *Revelly* The music of it was like rivers running

“ ‘ They will follow,’ said the drummer ‘ Matthew, pull you now for the Manacles ’

“ So my father pulled for the Manacles, and came to an easy close outside Carn dû And the drummer took his sticks and beat a tattoo, there by the edge of the reef , and the music of it was like a rolling chariot

“ ‘ That will do,’ says he, breaking off , ‘ they will follow Pull now for the shore under Gunner’s Meadow ’

“ Then my father pulled for the shore, and ran his boat in under Gunner’s Meadow And they stepped out, all three, and walked up to the meadow By the gate the drummer halted, and began his tattoo again, looking out towards the darkness over the sea

“ And while the drum beat, and my father held his breath, there came up out of the sea and the darkness a troop of many men, horse and foot, and formed up among the graves , and others rose out of the graves and formed up—drowned Marines with bleached faces, and pale Hussars, riding their horses, all lean and shadowy There

was no clatter of hoofs or accoutrements, my father said, but a soft sound all the while like the beating of a bird's wing, and a black shadow lying like a pool about the feet of all. The drummer stood upon a little knoll just inside the gate, and beside him the tall trumpeter, with hand on hip, watching them gather, and behind them both my father, clinging to the gate. When no more came, the drummer stopped playing, and said, 'Call the roll.'

"Then the trumpeter stepped towards the end man of the rank and called, 'Troop-Sergeant-Major Thomas Irons!' and the man answered in a thin voice, 'Here!'

" 'Troop - Sergeant - Major Thomas Irons, how is it with you?'

"The man answered, 'How should it be with me? When I was young, I betrayed a girl, and when I was grown, I betrayed a friend, and for these things I must pay. But I died as a man ought. God save the King!'

"The trumpeter called to the next man, 'Trooper Henry Buckingham!' and the next man answered, 'Here!'

" 'Trooper Henry Buckingham, how is it with you?'

" 'How should it be with me? I was a drunkard, and I stole, and in Lugo, in a wine-shop, I killed a man. But I died as a man should. God save the King!'

"So the trumpeter went down the line, and when he had finished, the drummer took it up, hailing the dead Marines in their order. Each man answered to his name, and each man ended with 'God save the King!' When all were hailed, the drummer stepped back to his mound, and called

" 'It is well. You are content, and we are content to join you. Wait, now, a little while.'

"With this he turned and ordered my father to pick up the lantern and lead the way back. As my father picked it up, he heard the ranks of dead men cheer and call, 'God save the King!' all together, and saw them waver and fade back into the dark, like a breath fading off a pane.

"But when they came back here to the kitchen, and my father set the lantern down, it seemed they'd both forgot about him. For the drummer turned in the lantern light—and my father could see the blood still welling out of the hole in his breast—and took the trumpet-sling from around the other's neck, and locked drum and



trumpet together again, choosing the letters on the lock very carefully  
While he did this he said

“ ‘ The word is no more Corunna, but Bayonne As you left out an “ n ” in Corunna, so must I leave out an “ n ” in Bayonne ’ And before snapping the padlock, he spelt out the word slowly— ‘ B-A-Y-O-N-E ’ After that, he used no more speech, but turned and hung the two instruments back on the hook, and then took the trumpeter by the arm , and the pair walked out into the darkness, glancing neither to right nor left

“ My father was on the point of following, when he heard a sort of sigh behind him , and there, sitting in the elbow-chair, was the very trumpeter he had just seen walk out by the door ! If my father’s heart jumped before, you may believe it jumped quicker now But, after a bit, he went up to the man asleep in the chair and put a hand upon him It was the trumpeter in flesh and blood that he touched , but though the flesh was warm, the trumpeter was dead

“ Well, sir, they buried him three days after , and at first my father was munded to say nothing about his dream (as he thought it) But the day after the funeral, he met Parson Kendall coming from Helston market , and the parson called out ‘ Have’ee heard the news the coach brought down this mornin’ ? ’ ‘ What news ? ’ says my father ‘ Why, that peace is agreed upon ’ ‘ None too soon,’ says my father ‘ Not soon enough for our poor lads at Bayonne,’ the parson answered ‘ Bayonne ! ’ cries my father, with a jump ‘ Why, yes ’, and the parson told him all about a great sally the French had made on the night of 13th April ‘ Do you happen to know if the 38th Regiment was engaged ? ’ my father asked ‘ Come, now,’ said Parson Kendall, ‘ I didn’t know you was so well up in the campaign But as it happens, I *do* know that the 38th was engaged, for ‘twas they that held a cottage and stopped the French advance ’

“ Still my father held his tongue , and when, a week later, he walked into Helston and bought a *Mercury* off the Sherborne rider, and got the landlord of the ‘ Angel ’ to spell out the list of killed and wounded, sure enough, there among the killed was Drummer John Christian of the 38th Foot

“ After this, there was nothing for a religious man but to make a clean breast. So my father went up to Parson Kendall and told

the whole story The parson listened, and put a question or two, and then asked

“ ‘ Have you tried to open the lock since that night ? ’

“ ‘ I han’t dared to touch it,’ says my father

“ ‘ Then come along and try ’ When the parson came to the cottage here, he took the things off the hook and tried the lock ‘ Did he say “ *Bayonne* ” ? The word has seven letters ’

“ ‘ Not if you spell it with one “ n ” as *he* did,’ says my father

“ The parson spelt it out—B-A-Y-O-N-E ‘ Whew ! ’ says he, for the lock had fallen open in his hand

“ He stood considering it a moment, and then he says, ‘ I tell you what I shouldn’t blab this all round the parish if I was you You won’t get no credit for truth-telling, and a miracle’s wasted on a set of fools But if you like, I’ll shut down the lock again upon a holy word that no one but me shall know, and neither drummer nor trumpeter, dead nor alive, shall frighten the secret out of me ’

“ ‘ I wish to gracious you would, parson,’ said my father

“ The parson chose the holy word there and then, and shut the lock back upon it, and hung the drum and trumpet back in their place He is gone long since, taking the word with him And till the lock is broken by force, nobody will ever separate those twain ”

## OLD ÆSON

SIR ARTHUR QUILLER-COUCH ("Q")

**J**UDGE between me and my guest, the stranger within my gates, the man whom in his extremity I clothed and fed

I remember well the time of his coming, for it happened at the end of five days and five nights during which the year passed from strength to age, in the interval between the swallow's departure and the redwing's coming, when the tortoise in my garden crept into his winter quarters, and the equinox was on us, with an east wind that parched the blood in the trees, so that their leaves for once knew no gradations of red and yellow, but turned at a stroke to brown, and crackled like tin-foil

At five o'clock in the morning of the sixth day I looked out. The wind still whistled across the sky, but now without the obstruction of any cloud. Full in front of my window Sirius flashed with a whiteness that pierced the eye. A little to the right, the whole constellation of Orion was suspended clear over a wedge-like gap in the coast, wherein the sea could be guessed rather than seen. And, travelling yet further, the eye fell on two brilliant lights, the one set high above the other—the one steady and a fiery red, the other yellow and blazing intermittently—the one Aldebaran, the other revolving on the light-house top, fifteen miles away.

Half-way up the east, the moon, now in her last quarter and decrepit, climbed with the dawn close at her heels. And at this hour they brought in the Stranger, asking if my pleasure were to give him clothing and hospitality.

Nobody knew whence he came—except that it was from the wind and the night—seeing that he spoke in a strange tongue, moaning and making a sound like the twittering of birds in a chimney. But his journey must have been long and painful, for his legs bent under him, and he could not stand when they lifted him. So, finding it

useless to question him for the time, I learnt from the servants all they had to tell—namely, that they had come upon him, but a few minutes before, lying on his face within my grounds, without staff or scrip, bareheaded, spent, and crying feebly for succour in his foreign tongue, and that in pity they had carried him in and brought him to me

Now for the look of this man, he seemed a century old, being bald, extremely wrinkled, with wide hollows where the teeth should be, and the flesh hanging loose and flaccid on his cheek-bones, and what colour he had could have come only from exposure to that bitter night. But his eyes chiefly spoke of his extreme age. They were blue and deep, and filled with the wisdom of years, and when he turned them in my direction they appeared to look through me, beyond me, and back upon centuries of sorrow and the slow endurance of man, as if his immediate misfortune were but an inconsiderable item in a long list. They frightened me. Perhaps they conveyed a warning of that which I was to endure at their owner's hands. From compassion, I ordered the servants to take him to my wife, with word that I wished her to set food before him, and see that it passed his lips.

So much I did for this Stranger. Now learn how he rewarded me.

He has taken my youth from me, and the most of my substance, and the love of my wife.

From the hour when he tasted food in my house, he sat there without hint of going. Whether from design, or because age and his sufferings had really palsied him, he came back tediously to life and warmth, nor for many days professed himself able to stand erect. Meanwhile he lived on the best of our hospitality. My wife tended him, and my servants ran at his bidding, for he managed early to make them understand scraps of his language, though slow in acquiring ours—I believe out of calculation, lest some one should inquire his business (which was a mystery) or hint at his departure. I myself often visited the room he had appropriated, and would sit for an hour watching those fathomless eyes while I tried to make head or tail of his discourse. When we were alone, my wife and I used to speculate at times on his probable profession. Was he a merchant?—an aged mariner?—a tinker, tailor, beggarman, thief? We could never decide, and he never disclosed

Then the awakening came. I sat one day in the chair beside his,

wondering as usual I had felt heavy of late, with a soreness and languor in my bones, as if a dead weight hung continually on my shoulders, and another rested on my heart A warmer colour in the Stranger's cheek caught my attention, and I bent forward, peering under the pendulous lids His eyes were livelier and less profound. The melancholy was passing from them as breath fades off a pane of glass *He was growing younger* Starting up, I ran across the room, to the mirror

There were two white hairs in my forelock, and, at the corner of either eye, half a dozen radiating lines I was an old man

Turning, I regarded the Stranger He sat phlegmatic as an Indian idol, and in my fancy I felt the young blood draining from my own heart, and saw it mantling in his cheeks Minute by minute I watched the slow miracle—the old man beautified As buds unfold, he put on a lovely youthfulness, and, drop by drop, left me winter

I hurried from the room, and seeking my wife, laid the case before her "This is a ghoul," I said, "that we harbour he is sucking my best blood, and the household is clean bewitched" She laid aside the book in which she read, and laughed at me Now my wife was well-looking, and her eyes were the light of my soul Consider, then, how I felt as she laughed, taking the Stranger's part against me When I left her it was with a new suspicion in my heart "How shall it be," I thought, "if after stealing my youth, he go on to take the one thing that is better?"

In my room, day by day, I brooded upon this—hating my own alteration, and fearing worse With the Stranger there was no longer any disguise His head blossomed in curls, white teeth filled the hollows of his mouth the pits in his cheek were heaped full with roses, glowing under a transparent skin It was Æson renewed and thankless, and he sat on, devouring my substance

Now, having probed my weakness, and being satisfied that I no longer dared to turn him out, he, who had half-imposed his native tongue upon us, constraining the household to a hideous jargon, the bastard growth of two languages, condescended to jerk us back rudely into our own speech once more, mastering it with a readiness that proved his former dissimulation, and using it henceforward as the sole vehicle of his wishes On his past life he remained silent, but took occasion to confide in me that he proposed embracing a military career, as soon as he should tire of the shelter of my roof.

And I groaned in my chamber , for that which I feared had come to pass He was making open love to my wife And the eyes with which he looked at her, and the lips with which he coaxed her, had been mine , and I was an old man Judge now between me and this guest

One morning I went to my wife , for the burden was past bearing, and I must satisfy myself I found her tending the plants on her window-ledge , and when she turned, I saw that years had not taken from her comeliness one jot And I was old

So I taxed her on the matter of this Stranger, saying this and that, and how I had cause to believe he loved her

" That is beyond doubt," she answered, and smiled

" By my head, I believe his fancy is returned ! " I blurted out

And her smile grew radiant, as, looking me in the face, she answered, " By my soul, husband, it is "

Then I went from her, down into my garden, where the day grew hot and the flowers were beginning to droop I stared upon them and could find no solution to the problem that worked in my heart And then I glanced up, eastward, to the sun above the privet-hedge, and saw *him* coming across the flower-beds, treading them down in wantonness He came with a light step and a smile, and I waited for him, leaning heavily on my stick

" Give me your watch ! " he called out, as he drew near

" Why should I give you my watch ? " I asked, while something worked in my throat

" Because I wish it , because it is gold , because you are too old and won't want it much longer "

" Take it," I cried, pulling the watch out and thrusting it into his hand " Take it—you who have taken all that is better ! Strip me, spoil me——"

A soft laugh sounded above, and I turned My wife was looking down on us from the window, and her eyes were both moist and glad

" Pardon me," she said, " it is you who are spoiling the child "

## THE SMALL PEOPLE

SIR ARTHUR QUILLER-ROUCH ("Q")

To a Lady who had asked for a Fairy Tale

**Y**OU thought it natural, my dear lady, to lay this command on me at the dance last night. We had parted, two months ago, in London, and we met, unexpectedly and to music, in this corner of the land where (they say) the piskies still keep. And certainly, when I led you out upon the balcony (that you might not see the new moon through glass and lose a lucky month), it was not hard to picture the Small People at their play on the turf and among the dim flower-beds below us. But, as a matter of fact, they are dead, these Small People. They were the long-lived but not immortal spirits of the folk who inhabited Cornwall many thousands of years back—far beyond Christ's birth. They were "poor innocents," not good enough for heaven, yet too good for the eternal fires, and when they first came, were of ordinary stature. But after Christ's birth they began to grow smaller and smaller, and at length turned into emmets and vanished from the earth.

The last I heard of them was a sad and serious little history, very different from the old legends. Part of it I was told by a hospital surgeon, of all people in the world. Part I learnt by looking at your beautiful gown last night, as you leant on the balcony-rail. You remember how heavy the dew was, and that I fetched a shawl for your shoulders. You did not wrap it so tightly round but that four marguerites in gold embroidery showed on the front of your bodice, and these come into the tale, the remainder of which I was taught this morning before breakfast, down among the cairns by the sea where the Small People's Gardens still remain—sheltered spots of green, with here and there some ferns and cliff-pinks left. For me they are libraries where sometimes I read for a whole summer's day, and, with the help of the hospital surgeon, I bring you from them a story about your ball-gown which is perfectly true.

Twenty years ago—before the fairies had dwindled into ants, and

when wayfarers were still used to turn their coats inside out, after nightfall, for fear of being "pisky-led"—there lived, down at the village, a girl who knew all the secrets of the Small People's Gardens. Where you and I discover sea-pinks only, and hear only the wash of the waves, she would go on midsummer nights and find flowers of every colour spread, and hundreds of little lights moving among them, and fountains and waterfalls, and swarms of small ladies and gentlemen, dressed in green and gold, walking and sporting among them, or reposing on the turf and telling stories to the most ravishing soft music. This was as much as she would relate, but it is certain that the piskies were friends of hers. For, in spite of her nightly wanderings, her housework was always well and cleanly done before other girls were dressed—the morning milk fresh in the dairy, the step sanded, the fire lit, and the scalding-pans warming over it. And as for her needlework, it was a wonder.

Some said she was a changeling, others that she had found the four-leaved clover or the fairy ointment, and rubbed her eyes with it. But it was her own secret, for whenever the people tried to follow her to the "Gardens," *whir! whir! whir!* buzzed in their ears, as if a flight of bees were passing, and every limb would feel as if stuck full of pins and pinched with tweezers, and they were rolled over and over, their tongues tied as if with cords, and at last, as soon as they could manage, they would pick themselves up and hobble home for their lives.

Well, the history—which, I must remind you, is a true one—goes on to say that in time the girl grew ambitious, or fell in love (I cannot remember which), and went to London. In any case it must have been a strong call that took her, for there are no fairies in London. I regret that my researches do not allow me to tell you how the Small People at home took her departure, but we will suppose that it grieved them deeply. Nor can I say precisely how the girl fared for many years. I think her fortune contained both joy and sorrow for a while, and I suspect that many passages of her life would be sadly out of place in this story, even if they could be hunted out. Indeed, fairy-tales have to omit so much nowadays, and therefore seem so antiquated, that one marvels how they could ever have been in fashion.

But you may take it as sure that in the end this girl met with more sorrow than joy, for when next she comes into sight it is in London streets and she is in rags. Moreover, though she wears a



flush on her cheeks, above the wrinkles, it does not come of health or high spirits, but perhaps from the fact that in the twenty years' interval she has seen millions of men and women, but not one single fairy

In those latter days I met her many times She passed under your windows shortly before dawn on the night that you gave your dance, early in the season You saw her, I think ?—a woman who staggered a little, and had some words with the policeman at the corner but, after all, a staggering woman in London is no such memorable sight All day long she was seeking work, work, work, and after dark she sought forgetfulness She found the one, in small quantities, and out of it she managed to buy the other, now and then, over the counter But she had long given up looking for the fairies The lights along the Embankment had ceased to remind her of those in the Small People's Gardens, nor did the noise bursting from music-hall doors as she passed recall the old sounds, and as for the scents, there were plenty in London, but none resembling that of the garden which you might smell a mile out at sea

I told you that her needlework had been a marvel when she lived down at the village Curiously enough, this was the one gift of the fairies that stayed by her, and it remained as wonderful as ever Her most frequent employer was a flat-footed Jew with a large, fleshy face, and because she had a name for honesty, she was not seldom entrusted with costly pieces of stuff, and allowed to carry them home to turn into ball-dresses under the roof through the gaps of which, as she stitched, she could see the night pass from purple to black, and from black to the lilac of daybreak There, with a hundred pounds' worth of silk and lace on her knee, she would sit and work a dozen hours to earn as many pence With fingers weary and—— But you know Hood's song, and no doubt have taken it to heart a dozen times

It came to this, however, that one evening, when she had not eaten for forty hours, her employer gave her a piece of embroidery to work against time The fact is, my dear lady, that you are very particular about having your commissions executed to the hour, and your dress-makers are anxious to oblige, knowing that you never squabble over the price To be sure, you have never heard of the flat-footed Jew man—how should you? And we may believe that your dressmakers knew just as little of the poor woman who had used to be the friend

of the Small People But the truth remains that, in the press of your many pleasures, you were pardonably twenty-four hours late in ordering the gown in which you were to appear an angel

Ah, madam ! will it comfort you to hear that *you* were the one to reconcile the Small People with that poor sister of yours who had left them, twenty years before, and wanted them so sorely ? The hospital doctor gave her complaint a long name, and I gather that it has a place by itself in books of pathology But the woman's tale was that, after she had been stitching through the long night, the dawn came through the roof and found her with four marguerites still left to be embroidered in gold on the pieces of satin that lay in her lap She threaded her needle afresh, rubbed her weary eyes, and began—when, lo ! a miracle

Instead of one hand, there were four at work—four hands, four needles, four lines of thread *The four marguerites were all being embroidered at the same time !* The piskies had forgiven, had remembered her at last, after these many years, and were coming to her help, as of old Ah, madam, the tears of thankfulness that ran from her hot eyes and fell upon those golden marguerites of yours !

Of course her eyes were disordered There was only one flower, really There was only one embroidered in the morning, when they found her sobbing, with your bodice still in her lap, and took her to the hospital , and that is why the dressmakers failed to keep faith with you for once, and made you so angry

Dear lady, the piskies are not easily summoned in these days.

## "THEY THAT WALK IN DARKNESS"

### I

**I**T was not till she had fasted every Monday and Thursday for a twelvemonth, that Zillah's long yearning for a child was gratified. She gave birth—O more than fair-dealing God!—to a boy.

Jossel, who had years ago abandoned the hope of an heir to pray for his soul, was as delighted as he was astonished. His wife had kept him in ignorance of the fasts by which she was appealing to Heaven, and when of a Monday or Thursday evening on his return from his boot factory in Bethnal Green he had sat down to his dinner in Dalston, no suspicion had crossed his mind that it was Zillah's breakfast. He himself was a prosaic person, incapable of imagining such spontaneities of religion, though he kept every fast which it behoves an orthodox Jew to endure who makes no speciality of sainthood. There was a touch of the fantastic in Zillah's character which he had only appreciated in its manifestation as girlish liveliness, and which Zillah knew would find no response from him in its religious expression.

Not that her spiritual innovations were original inventions. From some pious old crone, after whom (as she could read Hebrew) a cluster of neighbouring dames repeated what they could catch of the New Year prayers in the women's synagogue, Zillah had learned that certain holy men were accustomed to afflict their souls on Mondays and Thursdays. From her unsuspecting husband himself she had further elicited that these days were marked out from the ordinary, even for the man of the world, by a special prayer dubbed "the long 'He be merciful'". Surely on Mondays and Thursdays, then, He would indeed be merciful. To make sure of His goodwill she continued to be unmerciful to herself long after it became certain that her prayer had been granted.

## II

Now Zillah and Jossel lived in happy ignorance of most things, especially of their ignorance. The manufacture of boots and all that appertained thereto, the synagogue and religion, misunderstood reminiscences of early days in Russia, the doings and misdoings of a petty social circle, and such particular narrowness with general muddle as is produced by stumbling through a Sabbath paper and a Sunday paper—these were the main items in their intellectual inventory. Separate Zillah from her husband and she became even poorer, for she could not read at all.

Yet they prospered. The pavements of the East End resounded with their hob-nailed boots, and even in many a West End drawing-room their patent-leather shoes creaked. But they themselves had no wish to stand in such shoes, the dingy perspectives of Dalston villadom limited their ambition, already sufficiently gratified by migration from Whitechapel. The profits went to enlarge their factory and to buy houses, a favourite form of investment in their set. Zillah could cook fish to perfection, both fried and stewed, and the latter variety both sweet and sour. Nothing, in fine, had been wanting to their happiness—save a son, heir and mourner.

When he came at last, little that religion or superstition could do for him was left undone. An amulet on the bedpost scared off Lilith, Adam's first wife, who, perhaps because she missed being the mother of the human race, hankers after babes and sucklings. The initiation into the Abrahamic covenant was graced by a pious godfather with pendent ear-locks, and in the ceremony of the Redemption of the First-Born the five silver shekels to the priest were supplemented by golden sovereigns for the poor. Nor, though Zillah spoke the passable English of her circle, did she fail to rock her Brum's cradle to the old "Yiddish" nursery songs.

Sleep, my birdie, shut your eyes,  
O sleep, my little one,  
Too soon from cradle you'll arise  
To work that must be done

Almonds and raisins you shall sell,  
And holy scrolls shall write,  
So sleep, dear child, sleep sound and well,  
Your future beckons bright

Brum shall learn of ancient days,  
And love good folk of this,  
So sleep, dear babe, your mother prays,  
And God will send you bliss

Alas, that with all this, Brum should have grown up a weakling, sickly and anaemic, with a look that in the child of poorer parents would have said starvation

III

Yet through all the vicissitudes of his infantile career, Zillah's faith in his survival never faltered. He was emphatically a child from Heaven, and Providence would surely not fly in its own face. Jossel, not being aware of this, had a burden of perpetual solicitude, which Zillah often itched to lighten. Only, not having done so at first, she found it more and more difficult to confess her negotiation with the celestial powers. She went as near as she dared.

"If the Highest One has sent us a son after so many years," she said in the "Yiddish" which was still natural to her for intimate domestic discussion, "He will not take him away again."

"As well say," Jossel replied gloomily, "that because He has sent us luck and blessing after all these years, He may not take away our prosperity."

"Hush! don't beshrew the child!" And Zillah spat out carefully. She was tremulously afraid of words of ill-omen and of the Evil Eye, against which, she felt vaguely, even Heaven's protection was not potent. Secretly she became more and more convinced that some woman, envious of all this "luck and blessing," was withering Brum with her Evil Eye. And certainly the poor child was peaking and pining away. "Marasmus," a physician had once murmured, wondering that so well-dressed a child should appear so ill-nourished. "Take him to the seaside often, and feed him well," was the universal cry of the doctors, and so Zillah often deserted her husband for a *kosher* boarding-house at Brighton or Ramsgate, where the food was voluminous, and where Brum wrote schoolboy verses to the strange, fascinating sea.

For there were compensations in the premature flowering of his intellect. Even other mothers gradually came round to admitting that he was a prodigy. The black eyes seemed to burn in the white face as they looked out on the palpitating universe, or devoured every

and any scrap of print ! A pity they had so soon to be dulled behind spectacles But Zillah found consolation in the thought that the glasses would go well with the high black waistcoat and white tie of the British Rabbi He had been given to her by Heaven, and to Heaven must be returned Besides, that might divert it from any more sinister methods of taking him back

In his twelfth year Brum began to have more trouble with his eyes, and renewed his early acquaintance with the drab ante-rooms of eye hospitals that led, at the long-expected ting-ting of the doctor's bell, into a delectable chamber of quaint instruments But it was not till he was on the point of *Bar-Mitzvah* (confirmation at thirteen) that the blow fell Unwarned explicitly by any physician, Brum went blind

" Oh, mother," was his first anguished cry, " I shall never be able to read again "

#### IV

The prepared festivities added ironic complications to the horror After Brum should have read in the Law from the synagogue platform, there was to have been a reception at the house Brum himself had written out the invitations with conscious grammar " Present their compliments to Mr and Mrs Solomon and shall be glad to see *them* " (not *you*, as was the fashion of their set) It was after writing out so many notes in a fine schoolboy hand, that Brum began to be conscious of thickening blurs and dancing specks and colours Now that the blind boy was crouching in hopeless misery by the glowing fire, where he had so often recklessly pored over books in the delicious dusk, there was no one handy to write out the countermands As yet the wretched parents had kept the catastrophe secret, as though it reflected on themselves And by every post the Confirmation presents came pouring in

Brum refused even to feel these shining objects He had hoped to have a majority of books, but now the preponderance of watches, rings, and pen-knives, left him apathetic To his parents each present brought a fresh feeling of dishonesty

" We must let them know," they kept saying But the tiny difficulty of writing to so many prevented action.

" Perhaps he'll be all right by Sabbath," Zillah persisted frenziedly She clung to the faith that this was but a cloud , for

that the glory of the Confirmation of a future Rabbi could be so dimmed would argue an incomprehensible Providence Brum's performance was to be so splendid—he was to recite not only his own portion of the Law but the entire Sabbath *Sedrah* (section)

"He will never be all right," said Jossel, who, in the utter breakdown of Zillah, had for the first time made the round of the doctors with Brum "None of the physicians, not even the most expensive, hold out any hope And the dearest of all said the case puzzled him. It was like the blindness that often breaks out in Russia after the great fasts, and specially affects delicate children "

"Yes, I remember," said Zillah , " but that was only among the Christians "

"We have so many Christian customs nowadays," said Jossel grimly , and he thought of the pestilent heretic in his own synagogue who advocated that ladies should be added to the choir

"Then what shall we do about the people ? " moaned Zillah, wringing her hands in temporary discouragement

"You can advertise in the Jewish papers," came suddenly from the brooding Brum He had a flash of pleasure in the thought of composing something that would be published

"Yes, then everybody will read it on the Friday," said Jossel eagerly

Then Brum remembered that he would not be among the readers, and despair reconquered him But Zillah was shaking her head

"Yes, but if we tell people not to come, and then when Brum opens his eyes on the Sabbath morning, he can see to read the *Sedrah*——"

"But I don't want to see to read the *Sedrah*," said the boy petulantly , " I know it all by heart "

"My blessed boy ! " cried Zillah

"There's nothing wonderful," said the boy , " even if you read the Scroll, there are no vowels nor musical signs "

"But do you feel strong enough to do it all ? " said the father anxiously

"God will give him strength," put in the mother " And he will make his speech, too, won't you, my Brum ? "

The blind face kindled Yes, he would give his learned address He had saved his father the expense of hiring one, and had departed in original rhetorical ways from the conventional methods of expressing

filial gratitude to the parents who had brought him to manhood  
And was this eloquence to remain entombed in his own breast ?

His courageous resolution lightened the gloom His parents opened  
parcels they had not had the heart to touch They brought him his  
new suit, they placed the high hat of manhood on his head, and told  
him how fine and tall he looked , they wrapped the new silk praying-  
shawl round his shoulders

" Are the stripes blue or black ? " he asked

" Blue—a beautiful blue," said Jossel, striving to steady his voice

" It feels very nice," said Brum, smoothing the silk wistfully

" Yes, I can almost feel the blue "

Later on, when his father, a little brightened, had gone off to the  
exigent boot factory, Brum even asked to see the presents The blind  
retain these visual phrases

Zillah described them to him one by one as he handled them  
When it came to the books it dawned on her that she could not tell  
him the titles

" They have such beautiful pictures," she gushed evasively

The boy burst into tears

" Yes, but I shall never be able to read them," he sobbed.

" Yes, you will "

" No, I won't "

" Then I'll read them to you," she cried, with sudden resolution.

" But you can't read "

" I can learn "

" But you will be so long I ought to have taught you myself.  
And now it is too late ! "

v

In order to ensure perfection, and prevent stage fright, so to  
speak, it had been arranged that Brum should rehearse his reading  
of the *Sedrah* on Friday in the synagogue itself, at an hour when it  
was free from worshippers This rehearsal, his mother thought, was  
now all the more necessary to screw up Brum's confidence, but the  
father argued that as all places were now alike to the blind boy, the  
prominence of a public platform and a large staring audience could  
no longer unnerve him

" But he will *feel* them there ! " Zillah protested

" But since they are not there on the Friday—— ? "



"All the more reason Since he cannot see that they are *not* there, he can fancy they *are* there On Saturday he will be quite used to them "

But when Jossel, yielding, brought Brum to the synagogue appointment, the fusty old Beadle who was faithfully in attendance held up his hands in holy and secular horror at the blasphemy and the blindness respectively

"A blind man may not read the Law to the congregation!" he explained

"No?" said Jossel

"Why not?" asked Brum sharply

"Because it stands that the Law shall be read And a blind man cannot read He can only recite "

"But I know every word of it," protested Brum

The Beadle shook his head "But suppose you make a mistake? Shall the congregation hear a word or a syllable that God did not write? It would be playing into Satan's hands "

"I shall say every word as God wrote it Give me a trial "

But the fusty Beadle's piety was invincible He was highly sympathetic toward the human affliction, but he refused to open the Ark and produce the Scroll

"I'll let the *Chazan* (cantor) know he must read to-morrow, as usual," he said conclusively

Jossel went home, sighing, but silenced Zillah, however, was not so easily subdued "But my Brum will read it as truly as an angel," she cried, pressing the boy's head to her breast "And suppose he does make a mistake! Haven't I heard the congregation correct Winkelstein scores of times?"

"Hush!" said Jossel, "you talk like an Epicurean Satan makes us all err at times, but we must not play into his hands The *Din* (judgment) is that only those who see may read the Law to the congregation "

"Brum will read it much better than that snuffing old Winkelstein "

"Sha! Enough! The *Din* is the *Din*!"

"It was never meant to stop my poor Brum from——"

"The *Din* is the *Din* It won't let you dance on its head or chop wood on its back Besides, the synagogue refuses, so make an end "

" I *will* make an end I'll have *Minyan* (congregation) here, in our own house "

" What ! " and the poor man stared in amaze " Always she falls from heaven with a new idea ! "

" Brum shall not be disappointed " And she gave the silent boy a passionate hug

" But we have no Scroll of the Law," Brum said, speaking at last, and to the point

" Ah, that's you all over, Zillah," cried Jossel, relieved " Loud drumming in front and no soldiers behind ! "

" We can borrow a Scroll," said Zillah

Jossel gasped again " But the iniquity is just the same," he said

" As if Brum made mistakes ! "

" If you were a Rabbi, the congregation would baptize itself ! " Jossel quoted

Zillah writhed under the proverb " It isn't as if you went to the Rabbi, you took the word of the Beadle "

" He is a learned man "

Zillah donned her bonnet and shawl

" Where are you going ? "

" To the minister "

Jossel shrugged his shoulders, but did not stop her

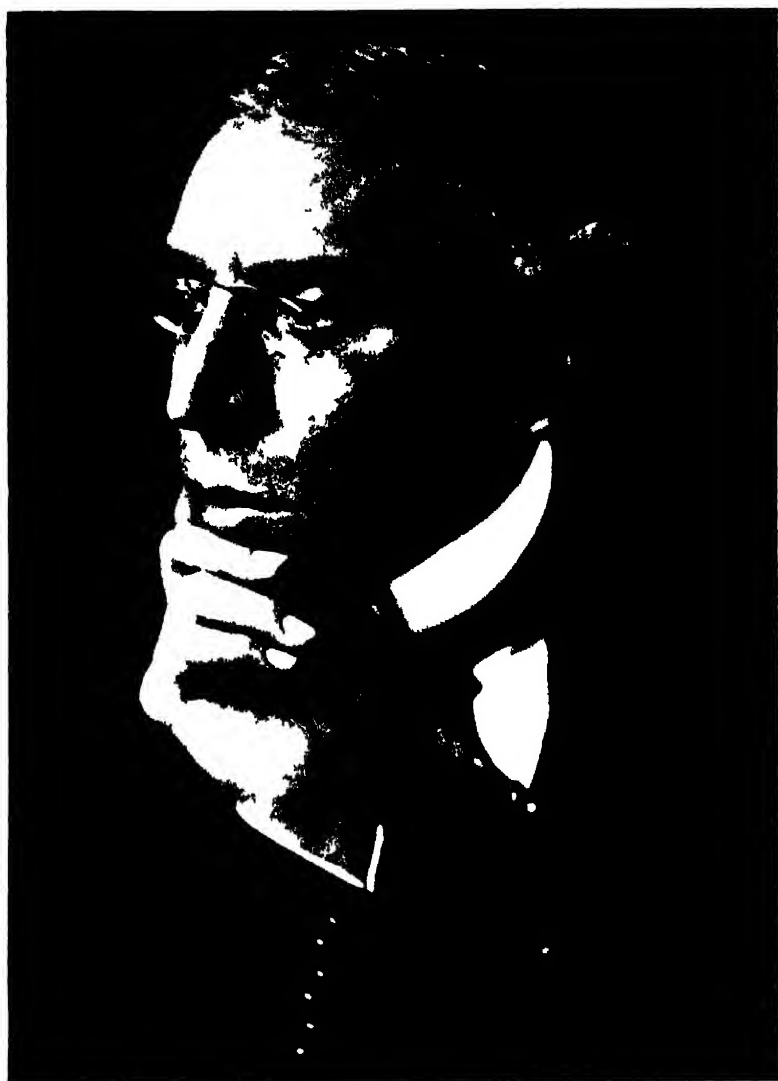
The minister, one of the new school of Rabbis who preach sermons in English and dress like Christian clergymen, as befitted the dignity of Dalston villadom, was taken aback by the ritual problem, so new and so tragic His acquaintance with the vast casuistic literature of his race was of the shallowest " No doubt the Beadle is right," he observed profoundly

" He cannot be right, he doesn't know my Brum "

Worn out by Zillah's persistency, the minister suggested going to the Beadle's together Aware of the Beadle's prodigious lore, he had too much regard for his own position to risk congregational odium by flying in the face of an exhumable *Din*

At the Beadle's, the *Din* was duly unearthed from worm-eaten folios, but Zillah remaining unappeased, further searching of these Rabbinic scriptures revealed a possible compromise

If the portion the boy recited was read over again by a reader, not blind, so that the first congregational reading did not count, it might perhaps be permitted.



10/10

Arch Zangwill



It would be, of course, too tedious to treat the whole *Sedrah* thus, but if Brum were content to recite his own particular seventh thereof, he should be summoned to the Rostrum

So Zillah returned to Jossel, sufficiently triumphant.

VI

"Abraham, the son of Jossel, shall stand"

In obedience to the Cantor's summons, the blind boy, in his high hat and silken praying-shawl with the blue stripes, rose, and guided by his father's hand ascended the platform amid the emotion of the synagogue. His brave boyish treble, pursuing its faultless way, thrilled the listeners to tears, and inflamed Zillah's breast, as she craned down from the gallery, with the mad hope that the miracle had happened, after all.

The house-gathering afterward savoured of the gruesome convivality of a funeral assemblage. But the praises of Brum, especially after his great speech, were sung more honestly than those of the buried, than whom the white-faced, dull-eyed boy, cut off from the gaily-coloured spectacle in the sunlit room, was a more tragic figure.

But Zillah, in her fineries and forced smiles, offered the most tragic image of all. Every congratulation was a rose-wreathed dagger, every eulogy of Brum's eloquence a reminder of the Rabbi God had thrown away in him.

VII

Amid the endless babble of suggestions made to her for Brum's cure, one—repeated several times by different persons—hooked itself to her distracted brain. Germany! There was a great eye-doctor in Germany who could do anything and everything. Yes, she would go to Germany.

This resolution, at which Jossel shrugged his shoulders in despairing scepticism, was received with rapture by Brum. How he had longed to see foreign countries, to pass over that shining sea which whispered and beckoned so at Brighton and Ramsgate! He almost forgot he would not *see* Germany, unless the eye-doctor were a miracle-monger indeed.

But he was doomed to a double disappointment, for instead of his going to Germany, Germany came to him, so to speak, in the shape of the specialist's annual visit to London, and the great man had

nothing soothing to say, only a compassionate head to shake, with ominous warnings to make the best of a bad job and fatten up the poor boy

Nor did Zillah's attempts to read take her out of the infant primers, despite long hours of knitted brow and puckered lips, and laborious triumphs over the childish sentences, by patient addition of syllable to syllable. She also tried to write, but got no further than her own name, imitated from the envelopes

To occupy Brum's days, Jossel, gaining enlightenment in the ways of darkness, procured Braille books. But the boy had read most of the stock works thus printed for the blind, and his impatient brain fretted at the tardiness of finger-reading. Jossel's one consolation was that the boy would not have to earn his living. The thought, however, of how his blind heir would be cheated by agents and rent-collectors was a touch of bitter even in this solitary sweet

#### VIII

It was the Sabbath Fire-Woman who, appropriately enough, kindled the next glimmer of hope in Zillah's bosom. The one maid-of-all-work, who had supplied all the help and grandeur Zillah needed in her establishment, having transferred her services to a husband, Zillah was left searching for an angel at thirteen pounds a year. In the interim the old Irishwoman who made a few pence a week by attending to the Sabbath fires of the poor Jews of the neighbourhood, became necessary on Friday nights and Saturdays, to save the household from cold or sin

"Och, the quare little brat!" she muttered, when she first came upon the pale, gnome-like figure by the fender, tapping the big book, for all the world like the Leprechaun cobbling

"And can't he see at all, at all?" she asked Zillah confidentially one Sabbath, when the boy was out of the room

Zillah shook her head, unable to speak

"Nebbich!" compassionately sighed the Fire-Woman, who had corrupted her native brogue with "Yiddish" "And wud he be borrun dark?"

"No, it came only a few months ago," faltered Zillah

The Fire-Woman crossed herself

"Sure, and who'll have been puttun' the Evil Oi on him?" she asked.

Zillah's face was convulsed

"I always said so!" she cried, "I always said so!"

"The divil burrin thum all!" cried the Fire-Woman, poking the coals viciously

"Yes, but I don't know who it is. They envied me my beautiful child, my lamb, my only one. And nothing can be done." She burst into tears

"Nothin' is a harrd wurrd! If he was *my* bhoy, the darlint, I'd cure him, aisy enough, so I wud."

Zillah's sobs ceased. "How?" she asked, her eyes gleaming strangely

"I'd take him to the Pope, av course."

"The Pope!" repeated Zillah vaguely

"Ay, the Holy Father! The ownly man in this wurruld that can take away the Evil Oi."

Zillah gasped. "Do you mean the Pope of Rome?"

She knew the phrase somehow, but what it connoted was very shadowy and sinister. Some strange, mighty chief of hostile heathendom.

"Who else wud I be manin'? The Holy Mother I'd be for prayin' to meself, but as ye're a Jewess, I dursn't tell ye to do that. But the Pope, he's a gentleman, an' so he is, an' sorra a bit he'll moind that ye don't go to mass, whin he shpies that poor, weeshy, pale shrimp o' yours. He'll just wave his hand, shpake a wurrd, an' whisht! in the twinklin' of a bedposht ye'll be praisin' the Holy Mother."

Zillah's brain was whirling. "Go to Rome!" she said

The Fire-Woman poised the poker

"Well, ye can't expect the Pope to come to Dalston!"

"No, no, I don't mean that," said Zillah, in hasty apology. "Only, it's so far off, and I shouldn't know how to go."

"It's not so far off as Ameriky, an' it's two broths of bhoys I've got there."

"Isn't it?" asked Zillah

"No, Lord love ye. an' sure, gold carries ye anywhere nowadays, except to Heaven."

"But if I got to Rome, would the Pope see the child?"

"As sartin as the child wud see him," the Fire-Woman replied emphatically

"He can do miracles, then?" inquired Zillah

"What else wud he be for? Not that 'tis much of a miracle to take away the Evil Oi, bad scan to the witch!"

"Then perhaps our Rabbi can do it too?" cried Zillah, with a sudden hope

The Fire-Woman shook her head "Did ye ever hear he could?"

"No," admitted Zillah

"Thru for you, mum Divil a wurrd wud I say against your Priesht—wan's as good as another, maybe, for ivry-day use, but whin it comes to throuble and heart-scaldin', I pity the poor craythurs who can't put up a candle to the blessed saints—an' so I do Niver a bhoy o' mine has crassed the ocean without the Virgin havin' her candle"

"And did they arrive safe?"

"They did so, ivry mother's son av 'em.

## IX

The more the distracted mother pondered over this sensational suggestion, the more it tugged at her Science and Judaism had failed her perhaps this unknown power, this heathen Pope, had indeed mastery over things diabolical Perhaps the strange religion he professed had verily a saving efficacy denied to her own Why should she not go to Rome?

True, the journey loomed before her as fearfully as a Polar Expedition to an ordinary mortal Germany she had been prepared to set out for it lay on the great route of Jewish migration westwards But Rome? She did not even know where it was But her new skill in reading would, she felt, help her through the perils She would be able to make out the names of the railway stations, if the train waited long enough

But with the cunning of the distracted she did not betray her heretical terment

"P-o-p-e, Pope," she spelt out of her infants' primer in Brum's hearing "Pope? What's that, Brum?"

"Oh, haven't you ever heard of the Pope, mother?"

"No," said Zillah, crimsoning in conscious invisibility

"He's a sort of Chief Rabbi of the Roman Catholics He wears a tiara Kings and emperors used to tremble before him"

"And don't they now?" she asked apprehensively.



"No, that was in the Middle Ages—hundreds of years ago. He only had power over the Dark Ages."

"Over the Dark Ages?" repeated Zillah, with a fresh, vague hope.

"When all the world was sunk in superstition and ignorance, mother. Then everybody believed in him."

Zillah felt chilled and rebuked. "Then he no longer works miracles?" she said faintly.

Brum laughed. "Oh, I daresay he works as many miracles as ever. Of course thousands of pilgrims still go to kiss his toe. I meant his temporal power is gone—that is, his earthly power. He doesn't rule over any countries, all he possesses is the Vatican, but that is full of the greatest pictures by Michael Angelo and Raphael."

Zillah gazed open-mouthed at the prodigy she had brought into the world.

"Raphael—that sounds Jewish," she murmured. She longed to ask in what country Rome was, but feared to betray herself.

Brum laughed again. "Raphael Jewish! Why, so it is! It's a Hebrew word meaning 'God's healing'."

"God's healing!" repeated Zillah, awestruck.

Her mind was made up.

x

"Knowest thou what, Jossel?" she said in "Yiddish," as they sat by the Friday-night fireside when Brum had been put to bed. "I have heard of a new doctor, better than all the others!" After all it was the doctor, the healer, the exorcist of the Evil Eye, that she was seeking in the Pope, not the Rabbi of an alien religion.

Jossel shook his head. "You will only throw more money away."

"Better than throwing hope away."

"Well, who is it now?"

"He lives far away."

"In Germany again?"

"No, in Rome."

"In Rome? Why, that's at the end of the world—in Italy!"

"I know it's in Italy," said Zillah, rejoiced at the information. "But what then? If organ-grinders can travel the distance, why can't I?"

"But you can't speak Italian!"

"And they can't speak English!"

"Madness! Words, but not wisdom! I could not trust you alone in such a strange country, and the season is too busy for me to leave the factory"

"I don't need you with me," she said, vastly relieved "Brum will be with me"

He stared at her "Brum!"

"Brum knows everything Believe me, Jossel, in two days he will speak Italian"

"Let be! Let be! Let me rest!"

"And on the way back he will be able to see! He will show me everything, and Mr Raphael's pictures 'God's healing,'" she murmured to herself

"And you'd be away for Passover! Enough!"

"No, we shall be easily back by Passover"

"O these women! The Almighty could not have rested on the seventh day if He had not left woman still uncreated!"

"You don't care whether Brum lives or dies!" Zillah burst into sobs

"It is just because I do that I ask how are you going to live on the journey? And there are no *kosher* hotels in Italy"

"We shall manage on eggs and fish God will forgive us if the hotel plates are unclean"

"But you won't be properly nourished without meat"

"Nonsense, when we were poor we *had* to do without it" To herself she thought, "If he only knew I did without food altogether on Mondays and Thursdays!"

## XI

And so Brum passed at last over the shining, wonderful sea, feeling only the wind on his forehead and the salt in his nostrils It was a beautiful day at the dawn of spring, the far-stretching sea sparkled with molten diamonds, and Zillah felt that the highest God's blessing rested like a blue sky over this strange pilgrimage. She was dressed with great taste, and few would have divined the ignorance under her silks

"Mother, can you see France yet?" Brum asked very soon.

"No, my lamb"

"Mother, can you see France yet?" he persisted later.

"I see white cliffs," she said at last

"Ah! that's only the white cliffs of old England. Look the other way"

"I *am* looking the other way I see white cliffs coming to meet us"

"Has France got white cliffs too?" cried Brum, disappointed

On the journey to Paris he wearied her to describe France In vain she tried her untrained vision and poor vocabulary could give him no new elements to weave into a mental picture There were trees and sometimes houses and churches And again trees. What kind of trees? Green! Brum was in despair France was, then, only like England white cliffs without, trees and houses within. He demanded the Seine at least

"Yes, I see a great water," his mother admitted at last

"That's it! It rises in the Cote d'Or, flows N N W then W, and N W into the English Channel It is more than twice as long as the Thames Perhaps you'll see the tributaries flowing into it—the little rivers, the Oise, the Marne, the Yonne"

"No wonder the angels envy me him!" thought Zillah proudly.

They halted at Paris, putting up for the night, by the advice of a friendly fellow-traveller, at a hotel by the Gare de Lyons, where, to Zillah's joy and amazement, everybody spoke English to her and accepted her English gold—a pleasant experience which was destined to be renewed at each stage, and which increased her hope of a happy issue

"How loud Paris sounds!" said Brum, as they drove across it. He had to construct it from its noises, for in answer to his feverish interrogations his mother could only explain that some streets were lined with trees, and some foolish, unrespectable people sat out in the cold air, drinking at little tables

"Oh, how jolly!" said Brum "But can't you see Notre Dame?"

"What's that?"

"A splendid cathedral, mother—very old Do look for two towers We must go there the first thing to-morrow"

"The first thing to-morrow we take the train The quicker we get to the doctor, the better"

"Oh, but we can't leave Paris without seeing Notre Dame, and the gargoyles, and perhaps Quasimodo, and all that Victor Hugo

describes "I wonder if we shall see a devil-fish in Italy," he added irrelevantly

"You'll see the devil if you go to such places," said Zillah, who, besides shirking the labour of description, was anxious not to provoke unnecessarily the God of Israel

"But I've often been to St Paul's with the boys," said Brum

"Have you?" she was vaguely alarmed

"Yes, it's lovely—the stained windows and the organ Yes, and the Abbey's glorious too, it almost makes me cry I always liked to hear the music with my eyes shut," he added, with forced cheeriness, "and now that'll be all right"

"But your father wouldn't like it," said Zillah feebly

"Father wouldn't like me to read the *Pilgrim's Progress*," retorted Brum "He doesn't understand these things There's no harm in our going to Notre Dame"

"No, no, it'll be much better to save all these places for the way back, when you'll be able to see for yourself"

Too late it struck her she had missed an opportunity of breaking to Brum the real object of the expedition

"But the Seine, anyhow," he persisted "We can go there to-night"

"But what can you see at night?" cried Zillah unthinkingly

"Oh, mother! how beautiful it used to be to look over London Bridge at night when we came back from the Crystal Palace!"

In the end Zillah accepted the compromise, and after their dinner of fish and vegetables—for which Brum had scant appetite—they were confided by the hotel porter to a bulbous-nosed cabman, who had instructions to restore them to the hotel Zillah thought wistfully of her warm parlour in Dalston, with the firelight reflected in the glass cases of the wax flowers

The cab stopped on a quay

"Well?" said Brum breathlessly

"Little fool!" said Zillah good-humouredly "There is nothing but water—the same water as in London"

"But there are lights, aren't there?"

"Yes, there are lights," she admitted cheerfully.

"Where is the moon?"

"Where she always is—in the sky."

"Doesn't she make a silver path on the water?" he said, with a sob in his voice

"What are you crying at? The mother didn't mean to make you cry"

She strained him contritely to her bosom and kissed away his tears

**XII**

The train for Switzerland started so early that Brum had no time to say his morning prayers, so, the carriage being to themselves, he donned his phylacteries and his praying-shawl with the blue stripes

Zillah sat listening to the hour-long recitative with admiration of his memory

Early in the hour she interrupted him to say: "How lucky I haven't to say all that! I should get tired"

"That's curious!" replied Brum "I was just saying, 'Blessed art Thou, O Lord our God, who hath not made me a woman' But a woman *has* to pray, too, mother Else why is there given a special form for the women to substitute?—'Who hath made me according to His will' "

"Ah, that's only for learned women Only learned women pray"

"Well, you'd like to pray the Benediction that comes next, mother, I know Say it with me—do"

She repeated the Hebrew obediently, then asked "What does it mean?"

"'Blessed art Thou, O Lord our God, who openest the eyes of the blind' "

"Oh, my poor Brum! Teach it me! Say the Hebrew again"

She repeated it till she could say it unprompted And then throughout the journey her lips moved with it at odd times It became a talisman—a compromise with the God who had failed her

"Blessed art Thou, O Lord our God, who openest the eyes of the blind"

**XIII**

Mountains were the great sensation of the passage through Switzerland Brum had never seen a mountain, and the thought of being among the highest mountains in Europe was thrilling Even Zillah's eyes could scarcely miss the mountains She painted them in broad

strokes But they did not at all correspond to Brum's expectations of the Alps

"Don't you see glaciers?" he asked anxiously

"No," replied Zillah, but kept a sharp eye on the windows of passing chalets till the boy discovered that she was looking for glaciers at work

"Great masses of ice," he explained, "sliding down very slowly, and glittering like the bergs in the Polar regions"

"No, I see none," she said, blushing

"Ah! wait till we come to Mont Blanc"

Mont Blanc was an obsession, his geography was not minute enough to know that the route did not pass within sight of it He had expected it to dominate Switzerland as a cathedral spire dominates a little town

"Mont Blanc is 15,784 feet above the sea," he said voluptuously "Eternal snow is on its top, but you will not see that, because it is above the clouds"

"It is, then, in heaven," said Zillah

"God is there," replied Brum gravely, and burst out with Coleridge's lines from his school-book

"God! let the torrents, like a shout of nations,  
Answer! and let the ice-plains echo, God!  
God! sing ye meadow-streams with gladsome voice  
Ye pine-groves, with your soft and soul-like sounds!  
And they, too, have a voice, yon piles of snow,  
And in their perilous fall shall thunder God!"

"Who openest the eyes of the blind," murmured Zillah

"There are five torrents rushing down also," added Brum "'And you, ye five wild torrents fiercely glad' You'll recognise Mont Blanc by that Don't you see them yet, mother?"

"Wait, I think I see them coming"

Presently she announced Mont Blanc definitely, described it with glaciers and torrents and its top reaching to God

Brum's face shone

"Poor lamb! I may as well give him Mont Blanc," she thought tenderly.

#### XIV

Endless other quaint dialogues passed between mother and son on that tedious and harassing journey southwards.

"There'll be no more snow when we get to Italy," Brum explained. "Italy's the land of beauty—always sunshine and blue sky. It's the country of the old gods—Venus, the goddess of beauty, Juno, with her peacocks, Jupiter, with his thunderbolts, and lots of others."

"But I thought the Pope was a Christian," said Zillah.

"So he is. It was long ago, before people believed in Christianity."

"But then they were all Jews."

"Oh no, mother. There were Pagan gods that people used to believe in at Rome and in Greece. In Greece, though, these gods changed their names."

"So!" said Zillah scornfully, "I suppose they wanted to have a fresh chance. And what's become of them now?"

"They weren't over there, not really."

"And yet people believed in them? Is it possible?" Zillah clucked her tongue with contemptuous surprise. Then she murmured mechanically, "Blessed art Thou, O Lord our God, who openest the eyes of the blind."

"Well, and what do people believe in now? The Pope!" Brum reminded her. "And yet *he's* not true."

Zillah's heart sank. "But he's really there," she protested feebly.

"Oh yes, he's there, because pilgrims come from all parts of the world to get his blessing."

Her hopes revived.

"But they wouldn't come unless he really did them good."

"Well, if you argue like that, mother, you might as well say we ought to believe in Christ."

"Hush! hush!" The forbidden word jarred on Zillah. She felt chilled and silenced. She had to call up the image of the Irish Fire-Woman to restore herself to confidence. It was clear Brum must not be told, his unfaith might spoil all. No, the deception must be kept up till his eyes were opened—in more than one sense.

## XV

After Mont Blanc, Brum's great interest was the leaning tower of Pisa. "It is one of the wonders of the world," he said, "there are seven altogether!"

"Yes, it is a wonderful world," said Zillah; "I never thought about it before."

And, in truth, Italy was beginning to touch sleeping chords. The cypresses, the sunset on the mountains, the white towns dozing on the hills under the magical blue sky—all these broad manifestations of an obvious beauty, under the spur of Brum's incessant interrogatory, began to penetrate. Nature in unusual combinations spoke to her as its habitual phenomena had never done. Her replies to Brum did rough justice to Italy.

Florence recalled *Romola* to the boy. He told his mother about Savonarola. "He was burned!"

"What!" cried Zillah. "Burn a Christian! No wonder, then, they burned Jews. But why?"

"He wanted the people to be good. All good people suffer."

"Oh, nonsense, Brum! It is the bad who suffer."

Then she looked at his wasted, white face, grown thinner with the weariness of the long journey through perpetual night, and wonder at her own words struck her silent.

#### XVI

They arrived at last in the Eternal City, having taken a final run of many hours without a break. But the Pope was still to seek.

Leaving the exhausted Brum in bed, Zillah drove the first morning to the Vatican, where Brum said he lived, and asked to see him.

A glittering Swiss Guard stared blankly at her, and directed her by dumb show to follow the stream of people—the pilgrims, Zillah told herself. She was made to scrawl her name, and, thanking God that she had acquired that accomplishment, she went softly up a gorgeous flight of steps, and past awe-inspiring creatures in tufted helmets, into the Sistine Chapel, where she wondered at people staring ceilingwards through opera-glasses, or looking downwards into little mirrors. Zillah also stared up through the gloom till she had a crick in the neck, but saw no sign of the Pope. She inquired of the janitor whether he was the Pope, and realised that English was, after all, not the universal language. She returned gloomily to see after Brum, and to consider her plan of campaign.

"The great doctor was not at home," she said. "We must wait a little."

"And yet you made us hurry so through everything," grumbled Brum.



Brum remained in bed, while Zillah went to get some lunch in the dining-room. A richly dressed old lady who sat near her noticed that she was eating Lenten fare, like herself, and, assuming her a fellow-Catholic, spoke to her in foreign-sounding English about the blind boy whose arrival she had observed.

Zillah asked her how one could get to see the Pope, and the old lady told her it was very difficult.

"Ah, those blessed old times before 1870!—ah, the splendid ceremonies in St Peter's! Do you remember them?"

Zillah shook her head. The old lady's assumption of spiritual fellowship made her uneasy.

But St Peter's stuck in her mind. Brum had already told her it was the Pope's house of prayer. Clearly, therefore, it was only necessary to loiter about there with Brum to chance upon him and extort his compassionate withdrawal of the spell of the Evil Eye. With a culminating inspiration she bought a photograph of the Pope, and overcoming the first shock of hereditary repulsion at the sight of the large pendent crucifix at his breast, she studied carefully the Pontiff's face and the Papal robes.

Then, when Brum declared himself strong enough to get up, they drove to St Peter's, the instruction being given quietly to the driver so that Brum should not overhear it.

It was the first time Zillah had ever been in a cathedral, and the vastness and glory of it swept over her almost as a reassuring sense of a greater God than she had worshipped in dingy synagogues. She walked about solemnly, leading Brum by the hand, her breast swelling with suppressed sobs of hope. Her eyes roved everywhere, searching for the Pope, but at moments she well-nigh forgot her disappointment at his absence in the wonder and ghostly comfort of the great dim spaces, and in the mysterious twinkle of the countless lights before the bronze canopy with its golden-flashing columns.

"Where are we, mother?" said Brum at last.

"We are waiting for the doctor."

"But where?"

"In the waiting-room."

"It seems very large, mother."

"No, I am walking round and round."

"There is a strange smell, mother—I don't know what—something religious."

" Oh, nonsense ! " She laughed uneasily

" I know what it smells like cold marble pillars and warm coloured windows "

Her blood froze at such uncanny sensibility

" It is the smell of the medicines," she murmured Somehow his divination made it more difficult to confess to him

" It feels like being in St Paul's or the Abbey," he persisted, " when I used to shut my eyes to hear the organ better " He had scarcely ceased speaking, when a soft, slow music began to thrill with life the great stone spaces

Brum's grasp tightened convulsively a light leapt into the blind face Both came to a standstill, silent In Zillah's breast rapture made confusion more confounded, and as this pealing grandeur, swelling more passionately, uplifted her high as the mighty Dome, she forgot everything—even the need of explanation to Brum—in this wonderful sense of a Power that could heal, and her Hebrew benediction flowed out into sobbing speech

" ' Blessed art Thou, O Lord our God, who openest the eyes of the blind ' "

But Brum had fainted, and hung heavy on her arm

## XVII

When Brum awoke, in bed again, after his long fainting-fit, he related with surprise his vivid dream of St Paul's, and Zillah weakly acquiesced in the new deception, especially as the doctor warned her against exciting the boy But her hopes were brighter than ever, for the old lady had beneficently appeared from behind a pillar in St Peter's to offer Eau de Cologne for the unconscious Brum, and had then, interesting herself in the couple, promised to procure for her fellow-Catholics admission to the next Papal reception Being a very rich and fashionable old lady, she kept her word, but unfortunately, when the day came round, Brum was terribly low and forbidden to leave his bed

Zillah was distracted If she should miss the great chance after all ! It might never recur again

" Brum," she said at last, " this is the only day for a long time that the great eye-doctor receives patients Do you think you could go, my lamb ? "

" Why won't he come here—like the other doctors ? "

" He is too great "

" Well, I daresay I can manage It's miserable lying in bed. Fancy coming to Rome and seeing nothing ! "

With infinite care Brum was dressed and wrapped up, and placed in a specially comfortable brougham , and thus at last mother and son stood waiting in one of the ante-chambers of the Vatican, amid twenty other pilgrims whispering in strange languages. Zillah was radiantly assured the mighty Power, whatever it was, that spoke in music and in mountains, would never permit such weary journeyings and waitings to end in the old darkness . the malice of witches could not prevail against this great spirit of sunshine For Brum, too, the long pilgrimage had enveloped the doctor with a miraculous glamour as of an eighth wonder of the world

Drooping wearily on his mother's arm, but wrought up to joyous anticipation, Brum had an undoubting sense of the patient crowd around him waiting, as in his old hospital days, for admission to the doctor's sanctum His ear was strung for the ting-ting of the bell summoning the sufferers one by one

At last a wave of awe swept over the little fashionable gathering, and set Zillah's heart thumping and the room fading in mist, through which the tall, venerable, robed figure, the eagle features softened in benediction, gleamed like a god's Then she found herself on her knees, with Brum at her side, and the wonderful figure passing between two rows of reverent pilgrims

" Why must I kneel, mother ? " murmured Brum feebly

" Hush ! hush ! " she whispered " The gr<sup>at</sup> doc—— " she hesitated in awe of the venerable figure—" the great healer is here."

" The great healer ! " breathed Brum His face was transfigured with ecstatic forevision " ' Who openeth the eyes of the blind.' " he murmured as he fell forward in death:

BEATRICE HARRADEN

B. 1864

## AN IDYLL OF LONDON

**I**T was one o'clock, and many of the students in the National Gallery had left off work, and were refreshing themselves with lunch and conversation. There was one old worker who had not stirred from his place, but he had put down his brush, and had taken from his pocket a small book, which was, like its owner, thin and shabby of covering. He seemed to find pleasure in reading it, for he turned over its pages with all the tenderness characteristic of one who loves what he reads. Now and again he glanced at his unfinished copy of the beautiful portrait of Andrea del Sarto, and once his eyes rested on another copy next to his, better and truer than his, and once he stooped to pick up a girl's prune-coloured tie which had fallen from the neighbouring easel. After this he seemed to become unconscious of his surroundings, as unconscious indeed as any one of the pictures near him. Any one might have been justified in mistaking him for the portrait of a man, but that his lips moved, for it was his custom to read softly to himself.

The students passed back to their places, not troubling to notice him, because they knew from experience that he never noticed them, and that all greetings were wasted on him, and all words were wanton expenditure of breath. They had come to regard him very much in the same way as many of us regard the wonders of Nature, without astonishment, without any questionings, and often without any interest. One girl, a new-comer, did chance to say to her companion

"How ill that old man looks!"

"Oh, he always looks like that," was the answer. "You will soon get accustomed to him. Come along! I must finish my 'Blind Beggar' this afternoon."

In a few minutes most of the workers were busy again, although there were some who continued to chat quietly, and several young men who seemed reluctant to leave their girl-friends, and who were by no means encouraged to go! One young man came to claim his

book and pipe, which he had left in the charge of a bright-eyed girl, who was copying Sir Joshua's Angels. She gave him his treasures, and received in exchange a dark-red rose, which she fastened in her belt, and then he returned to his portrait of Mrs Siddons. But there was something in his disconsolate manner which made one suspect that he thought less of Mrs Siddons's beauty than of the beauty of the girl who was wearing the dark-red rose! The strangers strolling through the rooms stopped now and again to peer curiously at the students' work. They were stared at indignantly by the students themselves, but they made no attempt to move away, and even ventured sometimes to pass criticisms of no tender character on some of the copies. The fierce-looking man who was copying "The Horse-Fair" deliberately put down his brushes, folded his arms, and waited defiantly until they had gone by, but others, wiser in their generation, went on painting calmly. Several workers were painting the new Raphael. One of them was a white-haired old gentlewoman, whose hand was trembling, and yet skilful still. More than once she turned to give a few hints to the young girl near her, who looked in some distress and doubt. Just the needful help was given, and then the girl plied her brush merrily, smiling the while with pleasure and gratitude. There seemed to be a genial, kindly influence at work, a certain homeliness too, which must needs assert itself where many are gathered together, working side by side. All made a harmony. the wonderful pictures collected from many lands and many centuries, each with its meaning, and its message from the Past. the ever-present memories of the painters themselves, who had worked and striven and conquered. and the living human beings, each with his wealth of earnest endeavour and hope.

Meanwhile, the old man read on uninterruptedly, until two hands were put over his book, and a gentle voice said

"Mr Lindall, you have had no lunch again. Do you know, I begin to hate Lucretius. He always makes you forget your food."

The old man looked up, and something like a smile passed over his joyless face when he saw Helen Stanley bending over him.

"Ah!" he answered, "you must not hate Lucretius. I have had more pleasant hours with him than with any living person."

He rose, and came forward to examine her copy of Andrea del Sarto's portrait.

"Yours is better than mine," he said critically, "in fact, mine

is a failure I think I shall only get a small price for mine, indeed, I doubt whether I shall get sufficient to pay for my funeral "

" You speak dismally," she answered, smiling

" I missed you yesterday," he continued, half-dreamily " I left my work, and I wandered through the rooms, and I did not even read Lucretius Something seemed to have gone from my life at first I thought it must be my favourite Raphael, or the Murillo, but it was neither the one nor the other, it was you That was strange, wasn't it? But you know we get accustomed to anything, and perhaps I should have missed you less the second day, and by the end of a week I should not have missed you at all Mercifully, we have in us the power of forgetting "

" I do not wish to plead for myself," she said, " but I do not believe that you or any one could really forget That which outsiders call forgetfulness might be called by the better name of resignation "

" I don't care about talking any more now," he said suddenly, and he went to his easel and worked silently at his picture and Helen Stanley glanced at him, and thought she had never seen her old companion look so forlorn and desolate as he did to-day He looked as if no gentle hand had ever been placed on him in kindness and affection, and that seemed to her a terrible thing, for she was one of those prehistorically-minded persons who persist in believing that affection is as needful to human life as rain to flower-life When first she came to work at the Gallery, some twelve months ago, she had noticed this old man, and had wished for his companionship she was herself lonely and sorrowful, and, although young, had to fight her own battles, and had learnt something of the difficulties of fighting, and this had given her an experience beyond her years She was not more than twenty-four years of age, but she looked rather older, and though she had beautiful eyes, full of meaning and kindness, her features were decidedly plain as well as unattractive There were some in the Gallery who said amongst themselves jestingly, that as Mr Lindall had waited so many years before talking to any one, he might have chosen some one better worth the waiting for! But they soon became accustomed to seeing Helen Stanley and Mr. Lindall together, and they laughed less than before, and meanwhile the acquaintance ripened into a sort of friendship, half sulky on his part, and wholly kind on her part He told her nothing about himself, and he asked nothing about herself: for weeks he never even knew

her name Sometimes he did not speak at all, and the two friends would work silently side by side until it was time to go, and then he waited until she was ready, and walked with her across Trafalgar Square, where they parted and went their own ways

But occasionally, when she least expected it, he would speak with glowing enthusiasm on art then his eyes seemed to become bright, and his bent figure more erect, and his whole bearing proud and dignified There were times, too, when he would speak on other subjects on the morality of free-thought, and on those who had died to vindicate free-thought; on Bruno, of blessed memory, on him, and scores of others too He would speak of the different schools of philosophy, he would laugh at himself, and at all who, having given time and thought to the study of life's complicated problems, had not reached one step farther than the old-world thinkers Perhaps he would quote one of his favourite philosophers, and then suddenly relapse into silence, returning to his wonted abstraction, and to his indifference to his surroundings Helen Stanley had learnt to understand his ways, and to appreciate his mind, and, without intruding on him in any manner, had put herself gently into his life, as his quiet champion and his friend No one, in her presence, dared to speak slightly of the old man, or to make fun of his tumble-down appearance, or of his worn-out silk hat with a crack in the side, or of his rag of a black tie, which, together with his overcoat, had "seen better days" Once she brought her needle and thread, and darned the torn sleeve during her lunch-time, and though he never knew it, it was a satisfaction to her to have helped him

To-day she noticed that he was painting badly, and that he seemed to take no interest in his work, but she went on busily with her own picture, and was so engrossed in it that she did not at first observe that he had packed up his brushes, and was preparing to go home

"Three more strokes," he said quietly, "and you will have finished your picture I shall never finish mine Perhaps you will be good enough to set it right for me I am not coming here again I don't seem to have caught the true expression what do you think? But I am not going to let it worry me, for I am sure you will promise to do your best for me See, I will hand over these colours and these brushes to you, and no doubt you will accept the palette as well I have no further use for it"

Helen Stanley took the palette which he held out towards her, and looked at him as though she would wish to question him

"It is very hot here," he continued, "and I am going out I am tired of work"

He hesitated, and then added "I should like you to come with me, if you can spare the time"

She packed up her things at once, and the two friends moved slowly away, he gazing absently at the pictures, and she wondering in her mind as to the meaning of his strange mood

When they were on the steps inside the building, he turned to Helen Stanley and said

"I should like to go back to the pictures once more I feel as if I must stand amongst them just a little longer They have been my companions for so long that they are almost part of myself I can close my eyes and recall them faithfully But I want to take a last look at them, I want to feel once more the presence of the great masters, and to refresh my mind with their genius When I look at their work, I think of their life, and can only wonder at their death It was so strange that they should die"

They went back together, and he took her to his favourite pictures, but remained speechless before them, and she did not disturb his thoughts At last he said

"I am ready to go I have said farewell to them all I know of nothing more wonderful than being amongst a number of fine pictures It is almost overwhelming One expects Nature to be grand, but one does not expect Man to be grand"

"You know we don't agree there," she answered "I expect everything grand and great from Man"

They went out of the Gallery, and into Trafalgar Square It was a scorching afternoon in August, but there was some cooling comfort in seeing the dancing water of the fountains sparkling so brightly in the sunshine

"Do you mind stopping here a few minutes?" he said "I should like to sit down and watch There is so much to see"

She led the way to a seat, one end of which was occupied by a workman, who was sleeping soundly, and snoring too, his arms folded tightly together He had a little clay pipe in the corner of his mouth it seemed to be tucked in so snugly that there was not much danger of its falling to the ground At last Helen spoke to her companion.



"What do you mean by saying that you will not be able to finish your picture? Perhaps you are not well—indeed, you don't look well. You make me anxious, for I have a great regard for you."

"I am ill and suffering," he answered quietly. "I thought I should have died yesterday, but I made up my mind to live until I saw you again, and I thought I would ask you to spend the afternoon with me, and to go with me to Westminster Abbey, and sit with me in the Cloisters. I do not feel able to go by myself, and I know of no one to ask except you, and I believed you would not refuse me, for you have been very kind to me. I do not quite understand why you have been kind to me, but I am wonderfully grateful to you. To-day I heard some one in the Gallery say that you were plain. I turned round and I said, 'I beg your pardon, I think she is very beautiful.' I think they laughed, and that puzzled me, for you have always seemed to me a very beautiful person."

At that moment the little clay pipe fell from the workman's mouth, and was broken into bits. He awoke with a start, gazed stupidly at the old man and his companion, and at the broken clay pipe.

"Curse my luck!" he said, yawning. "I was fond of that damned little pipe."

The old man drew his own pipe and his own tobacco-pouch from his pocket.

"Take these, stranger," he said. "I don't want them. And good luck to you!"

The man's face brightened up as he took the pipe and pouch.

"You're uncommon kind," he said. "Can you spare them?" he added, holding them out half-reluctantly.

"Yes," answered the old man, "I shall not smoke again. You may as well have these matches too."

The labourer put them in his pocket, smiled his thanks, and walked some little distance off, and Helen watched him examine his new pipe, and then fill it with tobacco and light it.

Mr Lindall proposed that they should be getting on their way to Westminster, and they soon found themselves in the Abbey. They sat together in the Poet's Corner. A smile of quiet happiness broke over the old man's tired face as he looked around and took in all the solemn beauty and grandeur of the resting-place of the great

"You know," he said, half to himself, half to his companion, "I have no belief of any kind, and no hopes and no fears, but all through

my life it has been a comfort to me to sit quietly in a church or a cathedral. The graceful arches, the sun shining through the stained windows, the vaulted roof, the noble columns, have helped me to understand the mystery which all our books of philosophy cannot make clear, though we bend over them year after year, and grow old over them, old in age and in spirit. Though I myself have never been outwardly a worshipper, I have never sat in a place of worship but that, for the time being, I have felt a better man. But directly the voice of doctrine or dogma was raised, the spell was broken for me, and that which I hoped was being made clear, had no further meaning for me. There was only one voice which ever helped me, the voice of the organ arousing me, thrilling me, filling me with strange longing, with welcome sadness, with solemn gladness. I have always thought that music can give an answer when everything else is of no avail. I do not know what you believe."

"I am so young to have found out," she said almost pleadingly.

"Don't worry yourself," he answered kindly. "Be brave and strong, and let the rest go. I should like to live long enough to see what you will make of your life. I believe you will never be false to yourself or to any one. That is rare. I believe you will not let any lower ideal take the place of your high ideal of what is beautiful and noble in art, in life. I believe that you will never let despair get the upper hand of you. If it does, you may as well die, yes, you may as well die. And I entreat you not to lose your entire faith in humanity. There is nothing like that for withering up the very core of the heart. I tell you, humanity and nature have so much in common with each other, that if you lose your entire faith in the former, you will lose part of your pleasure in the latter, you will see less beauty in the trees, the flowers, and the fields, less grandeur in the mighty mountains and the sea. The seasons will come and go, and you will scarcely heed their coming and going. Winter will settle over your soul just as it settled over mine. And you see what I am."

They had now passed into the Cloisters, and they sat down in one of the recesses of the windows, and looked out upon the rich plot of grass which the Cloisters enclose. There was not a soul there except themselves. The cool and the quiet and the beauty of the spot refreshed these pilgrims, and they rested in calm enjoyment.

Helen was the first to break the silence.

"I am glad you have brought me here," she said; "I shall never

grumble now at not being able to afford a fortnight in the country. This is better than anything else "

" It has always been my summer holiday to come here," he said. " When I first came I was like you, young and hopeful, and I had wonderful visions of what I intended to do and to be Here it was I made a vow that I would become a great painter, and win for myself a resting-place in this very Abbey There is humour in the situation, is there not ? "

" I don't like to hear you say that," she answered " It is not always possible for us to fulfil all our ambitions Still, it is better to have had them, and failed of them, than not to have had them at all "

" Possibly," he replied coldly Then he added " I wish you would tell me something about yourself You have always interested me "

" I have nothing to tell you about myself," she answered frankly " I am alone in the world, without friends and without relations The very name I use is not a real name I was a foundling At times I am sorry I do not belong to any one, and at other times I am glad You know I am fond of books and of art, so my life is not altogether empty , and I find my pleasure in hard work When I saw you at the Gallery, I wished to know you, and I asked one of the students who you were He told me you were a misanthrope Then I did not care so much about knowing you, until one day you spoke to me about my painting, and that was the beginning of our friendship "

" Forty years ago," he said sadly, " the friend of my boyhood deceived me I had not thought it possible that he could be false to me He screened himself behind me, and became prosperous and respected, at the expense of my honour I vowed I would never again make a friend A few years later, when I was beginning to hold up my head, the woman whom I loved deceived me Then I put from me all affection and all love Greater natures than mine are better able to bear these troubles, but my heart contracted and withered up "

He paused for a moment, many recollections overpowering him. Then he went on telling her the history of his life, unfolding to her the story of his hopes and ambitions, describing to her the very home where he was born, and the dark-eyed sister whom he had loved, and with whom he had played, over the daisied fields, and through the carpeted woods, and all amongst the richly-tinted bracken One

day he was told she was dead, and that he must never speak her name, but he spoke it all the day and all the night—Beryl, nothing but Beryl, and he looked for her in the fields, and in the woods, and amongst the bracken. It seemed as if he had unlocked the casket of his heart, closed for so many years, and as if all the memories of the past and all the secrets of his life were rushing out, glad to be free once more, and grateful for the open air of sympathy.

"Beryl was as swift as a deer!" he exclaimed. "You would have laughed to see her on the moor. Ah! it was hard to give up all thoughts of meeting her again. They told me I should see her in heaven, but I did not care about heaven. I wanted Beryl on earth, as I knew her, a merry, laughing sister. I think you are right. We don't forget, we become resigned in a dead, dull kind of way."

Suddenly he said, "I don't know why I have told you all this. And yet it has been such a pleasure to me. You are the only person to whom I could have spoken about myself, for no one else but you would have cared."

"Don't you think," she said gently, "that you made a mistake in letting your experiences embitter you? Because you had been unlucky in one or two instances, it did not follow that all the world was against you. Perhaps you unconsciously put yourself against all the world, and therefore saw every one in an unfavourable light. It seems so easy to do that. Trouble comes to most people, doesn't it?—and your philosophy should have taught you to make the best of it. At least that is my notion of the value of philosophy."

She spoke hesitatingly, as though she gave utterance to these words against her will.

"I am sure you are right, child," he said eagerly.

He put his hands to his eyes, but he could not keep back the tears.

"I have been such a lonely old man," he sobbed, "no one can tell what a lonely, loveless life mine has been. If I were not so old and so tired, I should like to begin all over again."

He sobbed for many minutes, and she did not know what to say to him of comfort, but she took his hand within her own and gently caressed it, as one might do to a little child in pain. He looked up and smiled through his tears.

"You have been very good to me," he said, "and I daresay you have thought me ungrateful. You mended my coat for me one morning, and not a day has passed but that I have looked at the darn and



Russell

*Beatrice Hammon*

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thought of you I liked to remember that you had done it for me. But you have done far more than this for me, you have put some sweetness into my life. Whatever becomes of me hereafter, I shall never be able to think of my life on earth as anything but beautiful, because you thought kindly of me, and acted kindly for me. The other night, when this terrible pain came over me, I wished you were near me, I wished to hear your voice. There is very beautiful music in your voice."

"I would have come to you gladly," she said, smiling quietly at him. "You must make a promise that when you feel ill again you will send for me. Then you will see what a splendid nurse I am, and how soon you will become strong and well under my care, strong enough to paint many more pictures, each one better than the last. Now, will you promise?"

"Yes," he said, and he raised her hand reverently to his lips.

"You are not angry with me for doing that?" he asked suddenly. "I should not like to vex you."

"I am not vexed," she answered kindly.

"Then perhaps I may kiss it once more?" he asked.

"Yes," she answered, and again he raised her hand to his lips.

"Thank you," he said quietly, "that was kind of you. Do you see that broken sun-ray yonder? Is it not golden? I find it very pleasant to sit here, and I am quite happy, and almost free from pain. Lately I have been troubled with a dull, thudding pain near my heart, but now I feel so strong that I believe I shall finish that *Andrea del Sarto* after all."

"Of course you will," she answered cheerily, "and I shall have to confess that yours is better than mine! I am quite willing to yield the palm to you."

"I must alter the expression of the mouth," he replied. "That is the part which has worried me. I don't think I told you that I have had a commission to copy Rembrandt's *Old Jew*. I must set to work on that next week."

"But you have given me your palette and brushes!" she laughed.

"You must be generous enough to lend them to me," he said, smiling. "By the way, I intend to give you my books, all of them. Some day I must show them to you. I especially value my philosophical books, they have been my faithful companions through many years. I believe you do not read Greek. That is a pity, because

you would surely enjoy Aristotle. I think I must teach you Greek " it would be an agreeable legacy to leave you when I pass away into the Great Silence "

" I should like to learn," she said, wondering to hear him speak so unreservedly. It seemed as if some vast barrier had been rolled aside, and as if she were getting to know him better, having been allowed to glance into his past life, to sympathise with his past mistakes, and with the failure of his ambitions, and with the deadening of his heart.

" You must read Æschylus," he continued enthusiastically, " and, if I mistake not, the ' Agamemnon ' will be an epoch in your life. You will find that all these studies will serve to ennoble your art, and you will be able to put mind into your work, and not merely form and colour. Do you know, I feel so well, that I believe I shall not only live to finish Andrea del Sarto, but also to smoke another pipe ? "

" You have been too rash to-day," she laughed, " giving away your pipe and pouch, your palette and brushes, in this reckless manner ! I must get you a new pipe to-morrow. I wonder you did not part with your venerable Lucretius "

" That reminds me," he said, fumbling in his pocket, " I think I have dropped my Lucretius. I fancy I left it somewhere in the Poet's Corner. It would grieve me to lose that book "

" Let me go and look for it," she said, and she advanced a few steps and then came back to him.

" You have been saying many kind words to me," she said, as she put her hand on his arm, " and I have not told you that I value your friendship, and am grateful to you for letting me be more than a mere stranger to you. I have been very lonely in my life, for I am not one to make friends easily, and it has been a great privilege to me to talk with you. I want you to know this, for if I have been anything to you, you have been a great deal to me. I have never met with much sympathy from those of my own age. I have found them narrow and unyielding, and they found me dull and uninteresting. They had passed through few experiences, and knew nothing about failure or success, and some of them did not even understand the earnestness of endeavour, and laughed at me when I spoke of a high ideal. So I withdrew into myself, and should probably have grown still more isolated than I was before, but that I met you, and, as time



went on, we became friends I shall always remember your teaching, and I will try to keep to a high ideal of life and art, and I will not let despair creep into my heart, and I will not lose my faith in humanity "

As she spoke, a lingering ray of sunshine lit up her face and gently caressed her soft brown hair slight though her form, and sombre her clothes, and unlovely her features, she seemed a gracious presence, because of her earnestness

" Now," she said brightly, " you rest here until I come back with your Lucretius, and then I think I must be getting on my way home But you must fix a time for our first Greek lesson ; for we must begin to-morrow "

When she had gone, he walked in the Cloisters, holding his hat in his hand and his stick under his arm There was a quiet smile on his face, which was called forth by pleasant thoughts in his mind, and he did not look quite so shrunken and shrivelled as usual His eyes were fixed on the ground , but he raised them and observed a white cat creeping towards him It came and rubbed itself against his foot, and purring with all its might, seemed determined to win some kind of notice from him The old man stooped down to stroke it, and was just touching its sleek coat, when he suddenly withdrew his hand and groaned deeply He struggled to the recess, and sank back The stick fell on the stone with a clatter, and the battered hat rolled down beside it, and the white cat fled away in terror , but realising that there was no cause for alarm, it came back and crouched near the silent figure of the old man, watching him intently Then it stretched out its paw and played with his hand, doing its utmost to coax him into a little fun , but he would not be coaxed, and the cat lost all patience with him, and left him to himself

Meanwhile Helen Stanley was looking for the lost Lucretius in the Poet's Corner She found it lying near Chaucer's tomb, and was just going to take it to her friend, when she saw the workman to whom they had spoken in Trafalgar Square. He recognised her at once, and came towards her.

" I've been having a quiet half-hour here," he said " It does me a right of good to sit in the Abbey "

" You should go into the Cloisters," she said kindly. " I have been sitting there with my friend He will be interested to hear that you love this beautiful Abbey."

" I should like to see him again," said the workman " He had a kind way about him, and that pipe he gave me is an uncommon good one Still, I am sorry I smashed the little clay pipe I'd grown used to it I'd smoked it ever since my little girl died and left me alone in the world I used to bring my little girl here, and now I come alone But it isn't the same thing "

" No, it could not be the same thing," said Helen, gently " But you find some little comfort here ? "

" Some little comfort," he answered " One can't expect much "

They went together into the Cloisters, and as they came near the recess where the old man rested, Helen said

" Why, he has fallen asleep ! He must have been very tired And he has dropped his hat and stick Thank you If you will put them down there, I will watch by his side until he wakes up I don't suppose he will sleep for long "

The workman stooped down to pick up the hat and stick, and glanced at the sleeper Something in the sleeper's countenance arrested his attention He turned to the girl, and saw that she was watching him

" What is it ? " she asked anxiously " What is the matter with you ? "

He tried to speak, but his voice failed him, and all he could do was to point with trembling hand to the old man

Helen looked, and a loud cry broke from her lips The old man was dead

BARRY PAIN

B. 1868

## THE KINDNESS OF THE CELESTIAL

**H**IS real name was Cyprian Langsdyke, but that would have struck any one as being far too much of a name for the boy. He had a quaint Chinese look, due to his bright, narrow eyes, and in consequence he was generally known at Desford as The Celestial. He was much more athletic than he looked, was reputed to be clever but whimsical, and known to be unruly. He was in the Fifth, and just at present he was in a bad temper, for things had been going exceedingly wrong with The Celestial. He had just expressed, in simple language, a wish that he was dead, and had been asked for his reasons.

"I never get any luck nowadays, look at that." He pointed to a football list on the screens. "Peter Hill playing in *my* place, and *me* stuck in the scrum. Oh, yes! I'd expected that. I shall be kicked out altogether to-morrow, that's a bit of Tommy Hill's captaining, that is. I knew he'd give Peter a lift, I wonder he hasn't asked *his* blooming mother to play. However, I don't want any favouring. I want ordinary justice—not family influence, but ordinary justice. And you don't get that from Tommy Hill, nor from the old man, nor from Henry Reginald Liggers, M A—more especially Liggers. I have had a day with Liggers. I was about two seconds late for morning prep—row with Liggers. Then, when we got to work, I saw that fathead Smithson asleep on the other side of the table. So I spilt my ink, calculating that, the way the table sloped, it would run across and pour over Smithson, and wake him up. Liggers copped me, he didn't even take the trouble to ask *why* I spilt it—simply a hundred Greek, with accents. Going in to breakfast, I had a slight accident and fell up against Liggers, and he called me a clumsy lout. Morning school, he made me construe three-quarters of the *Livy* all to my own cheek, and never put on Douglas, nor Banks, nor that fathead Smithson at all, finding he couldn't pill me on the *Livy*, he tore up my prose and told me to do it again. In the afternoon, at footer, he amused himself by scragging me, and hacking me, and saying I was off-side when I wasn't."

"He can't play much," said Banks, meaning to be sympathetic, but speaking unadvisedly

"You complete chump!" replied The Celestial, scornfully "Of course he can play! He captained his college team, and he's better than any of the other masters by a long chalk There's no sense in saying that he can't play footer, but he spites me Coming up from footer, he saw me come out of Hunley's, so he said, 'You're always in there, Langsdyke, eating buns and chocolate and trash of that kind, you'll ruin your wind' I wasn't going to explain to him, but, as a matter of fact, I hadn't been eating anything I'd just had four bottles of ginger-beer, and that was all—not another thing Then, in afternoon school, he sent me out of the room for blowing my nose"

The Smithson to whom The Celestial had made uncomplimentary allusions giggled reminiscently "I own it made a row," continued The Celestial, with an air of judicial fairness "I don't deny it, but I didn't do it on purpose I never know when it's going to make that row and when it isn't And now its Liggers' prep, and I'm bound to get dropped on again Don't I wish I was in the Sixth and had a study to myself! You can get your work done in three-quarters of an hour, and then you have the other half of prep all to yourself to read novels in It's beastly working in that day-room with Liggers or some other master looking on all the time You don't get a chance to—to do anything However, if Liggers is going to be rough on me I'll be rough on him That's the prep. bell, so now for breezes!"

The little group dispersed During preparation that night there were more than breezes—there were hurricanes The Celestial retired to his cubicle at ten, resigned and philosophical There were two big dormitories in the School House at Desford, each containing twenty cubicles The partitions which formed the cubicles were about seven feet high and did not reach the ceiling, so conversation was possible, and was permitted until the lights were put out at half-past ten

"I'm going to give up being hard on Liggers," remarked The Celestial from his cubicle to the rest of the lower dormitory "It's played out A master can call you an idiot, and you can't call him anything back again, so he has the bulge It's no use being at war with Liggers I'm going on a different line"

"What are you going to do?" inquired Smithson from the next cubicle.

Smithson, generally addressed as "Fathead," was of the good-natured, fat, indolent, rather stupid type. He was entirely devoted to The Celestial, to whom he stood in the position of a humble serf

"I'm going to try kindness Now dry up, because I'm writing my lines, and the gas will be out directly "

When the gas was put out The Celestial removed the counterpane and one blanket from his bed and lay down He was in consequence only just warm enough to be able to go to sleep, and he calculated quite rightly that in a couple of hours the cold would wake him. The cold acted as a silent alarm As soon as he was awake he got out of bed and looked out of the window He was pleased to find that all the lights were out in the master's wing of the house Then he produced from his chest of drawers a bull's-eye lantern, which he lit and placed so that it would illuminate the head of his bed On the chair by the bedside he put his Homer, his writing-case, and two inkpots Then he put on a football jersey, an ulster, and a dressing-gown, and, sitting up in bed, began to write lines, taking the writing-case and the Homer on his knee He wrote these lines in the very highest style of calligraphy Greek looks very beautiful when it is beautifully written, and The Celestial looked upon his performance when he had finished with the eye of an artist. He numbered every fifth line in red ink, and wrote the following note at the head of the page

"NB—These lines have been *correctly* numbered in order to facilitate counting—C LANGSDYKE "

He could think of nothing else which would make the imposition look more artistic, so he got out of bed, put away his writing things, ate two cranberry tarts which he had brought from Hunley's to assist him in his midnight toil, and turned out the lantern Then he went back again to bed and slept like a tired dog

Yet was Mr Liggers not contented with that imposition "If I ever get any of this red-ink foolery from you again," he remarked, "you'll have to re-write—understand that, please" The Celestial sighed the sigh of Christian resignation, and as Mr Liggers was going out politely opened the door for him

That morning in school Mr. Liggers happened to crumple up a corrected prose in his hand and aim it at the waste-paper basket It just missed The Fifth were down at their desks at the time The Celestial rose from his place, stepped softly across the class-room

picked up the little ball of paper, and carefully placed it in the very centre of the waste-paper basket. Then he looked round the room with perfect gravity and returned to his seat. The politeness was so excessive, so abnormal, and in The Celestial so unexpected, that the Fifth suffered—suffered badly from enforced suppression of their feelings. For a second or two the strict silence of the class-room continued, and then came a faint gurgling sound, as of one pouring water out of a bottle. It stopped abruptly, and an observer might have noticed that Smithson had gone purple in the face. Then the gurgling sound began again, it came quicker and louder and louder. Mr Liggers looked up from the prose that he was correcting and requested Smithson and Langsdyke to go out of the room.

"We've done it now," said Smithson. "I wonder what he'll do!"

"You've done it," said The Celestial, "I was only carrying out my plan and being polite to him. What did you laugh for?"

"If I hadn't laughed," said Smithson, sadly, "I believe I should have broken something inside me. It's awful. I never want to laugh except when I don't want to, and then I have to."

"Well," said The Celestial, "I'm going on being kind to the man. It's sure to move him in the end. Then he'll be sorry. I wonder if he likes cocoanuts?"

"Most people do. Where are you going to get them?"

"Market-place. There's a man comes in on Saturdays, and you have shies at them."

"But the market-place is out of bounds."

"I never said I wouldn't break *any* rules, Fathead. It's only Liggers I'm favouring."

"All right, I'm on!" said Smithson. "If we're copped, we're copped," he added fatalistically.

On the Saturday morning which followed, Mr Liggers put The Celestial on to translate Virgil. Now, The Celestial had taken particular trouble with his translation the night before, and on the rare occasions when The Celestial took trouble it became evident that he was a youth of some considerable promise. He had the beginnings of a poetical taste in him, of which he was very sincerely ashamed. His translation was not a marvellously brilliant piece of work, but it was good. He had a notion of style, and he had followed his master's example in translating Virgil into simple, rather archaic and Biblical English. Mr Liggers let him go on until he had translated the whole

lesson, and then said icily, "Thank you—that will do" He gave The Celestial full marks for the translation, however, and Mr. Liggers very rarely gave full marks But The Celestial had no means of discovering what marks he had got, and in any case would have preferred a word or two of praise

"That was an awful swagger construe of yours," remarked the sympathetic Banks to The Celestial afterwards, "but Liggers didn't say much, did he?"

Before The Celestial could reply Mr Liggers touched him on the shoulder and asked him if he would play fives Now, fives was the game at which The Celestial particularly excelled, and Mr Liggers was rather a new hand at it But The Celestial thanked him, and presently they met at the fives-court Mr Liggers won the first game easily, and looked suspicious He was winning the second rather more easily when he stopped suddenly.

"We'll finish this some time when you aren't sulking, Langsdyke I don't want any of your condescensions When I want you to *let* me win I'll tell you"

The Celestial said nothing, but politely handed Mr Liggers his coat In taming Mr Liggers it was obvious that considerable patience would be necessary

"Fathead," said The Celestial when he had found the devoted Smithson, "meet me after footer at Dow's Lane, and we'll go for those cocoanuts I'm going to give him three days' more kindness, he's trying, but I may get him in hand yet." Dow's Lane was the short cut to the market-place, both were out of bounds, and Dow's Lane was a peculiarly unsavoury, unsanitary, disease-producing place. But Smithson never thought of refusing, where his great patron The Celestial went, Smithson followed like a faithful dog

Late that afternoon the two returned from their expedition. The Celestial walked a little in advance—radiant, triumphant, behind him came the humble Smithson, bearing four cocoanuts—won by The Celestial at a cost of fivepence

"There's one for you, Fathead," remarked The Celestial when they had got up to the Schoolhouse, "and one for me, and two for a peace-offering on the altar of Liggers. Go and borrow Douglas's gimlet and get the gravy out of the inwards of our two I'm going upstairs to Liggers' study with the peace-offering"

"He is such a corker, you know," remarked Smithson to Douglas

when The Celestial had disappeared " I'm blest if I know whether he's rotting Liggers or whether he isn't But, my lord, he can shy ! Four in five shots isn't so dusty "

The Celestial found Mr Liggers in his study, and remarked gravely that he had brought him two cocoanuts Mr Liggers almost smiled, and his manner approached geniality

" Come now, Langsdyke, that's very good of you, but you mustn't let me deprive the senior day-room of its desirable indigestion Suppose you leave one of them and take the other away with you Where did you get them ? "

The question was not in the least inquisitorial , Mr Liggers had expected that the answer would be " At Hunley's " The dialogue which followed illustrates the state of The Celestial's ethics, which were erratic, but had something rather fine about them

" I shied for them in the market-place, sir " (The Celestial would never lie to save himself )

The geniality vanished at once from Mr Liggers's manner " You know that the market-place is out of bounds. Which way did you go to it ? "

" By Dow's Lane, sir "

" Which also is out of bounds "

" Yes, sir "

" Did any one go with you ? "

" No " (The Celestial would always lie to save any one else )

" Not Smithson ? "

" No, sir , I went alone "

" Take these things away I will tell you on Monday afternoon what your punishment will be , you have broken a most important rule You have gone a little too far this time I am sorry for you, but I am afraid that this will mean expulsion Now go away "

The Celestial went down again to the day-room, where he found Smithson and some others engaged in extracting the milk from the nuts with a gimlet

" Cocoanuts are cheap to-day," observed The Celestial " Liggers can't eat them , they're too rich for his poor stomach So he bade me bestow them on the bilious Banks and the debilitated Douglas Give me to drink of the gravy of the cocoanut " He seemed to be in particularly high and whimsical spirits, and drained the tooth-mug proffered to him with a fine melodramatic air " Now, then," he said,



"I've got three blessed shillings Let us go to Hunley's and drink and eat cranberry tarts, for the day after to-morrow we die—at least, I do "

Smithson knew there was something wrong, and privately inquired what it was.

"I fancy," said The Celestial, meditatively, "that I've about come to the end of the string, and now you can dry up, Fathead. You'll hear all the rest of it soon enough "

But late on the Sunday evening following, moved perhaps by the sentimentality inspired by the music of the evening service and the lateness of the hour, he told the faithful Smithson everything "For myself," he said, "I don't care With Tommy Hill to captain the footer and Liggers to make your life miserable in the Fifth, the sooner I'm out of Desford the better But my people will be sick—that's what I'm thinking about "

"Look here," said Smithson, half angrily, "I won't stand it I—I'm damned if I want to get off and see you sacked I was in it every bit as much as you were, and I'm going to say so ! "

"If you say one single word about it," answered The Celestial, "I'll punch your fat head off and never speak to you again Dry up and keep quiet and do as you're told "

When on Monday afternoon Mr Liggers came downstairs with bad news for The Celestial he found the boy seated on the stack of hot-water pipes and wrapped up in two overcoats

"Langsdyke," he said coldly, "I have considered your case, and I see no reason for treating you with any leniency I shall therefore——" he stopped suddenly as he saw the boy's flushed face and feverish eyes "Why," he asked, in quite a different voice, "what's the matter with you, Langsdyke? Are you ill? "

"It isn't anything, sir," answered The Celestial a little excitedly "It's just an ordinary sort of cold I'm shivering one moment and swea—— awfully hot the next, and my head aches fit to split Couldn't I take out my punishment in canings, sir, or partly canings and partly lnes? I don't want to beg off anything—only, you see, it's not so much for me as the mater that'll feel it if I——"

Mr Liggers interrupted him, and he had lost all his beautiful magisterial manner "That's all right, old man, don't you fret yourself You're not going to be expelled Now run off to the sick-room at once and say I sent you, and don't dream of coming to school this

afternoon We'll forget all about that punishment, I think I'm sorry you're ill "

The Celestial thanked him and climbed upstairs to the sick-room " I'm bad, Mrs Carter," he said to the matron, " and Liggers says I'm to stop here " And then this curious youth, who would have received the news of his expulsion with dry eyes, bent his head in his hands and burst into tears

" Poor dear ! " said the motherly Mrs Carter, " you *must* be ill to take on like that "

In the meantime Mr Liggers, who knew something of the condition of Dow's Lane, had hurried off to fetch a doctor On the following day the rest of the school knew that The Celestial was ill with scarlet fever, and had been removed to the sanatorium

On the following night, in Mr Liggers's sitting-room, the mathematical master, Mr Dunham, was giving Mr Liggers a piece of his mind

" I tell you I was in the dormitory passage myself, and overheard it , and I'll swear he only meant to be decent to you Of course, he blundered and overdid it and was whimsical about it—being a boy and not a prig—and would not let the others know that he really meant it , but he *did* mean it I know Langsdyke, and, I tell you, he's as plucky as a man, and proud of it—and as sensitive as a girl, and ashamed of it Look at that Virgil construe of his that you told me about Do you suppose a boy takes the trouble to prepare work like that unless he means to be kind to a master ? There isn't another boy in the Fifth, by the way, who *could* have rendered *in optato alveo* by ' in the haven where they fain would be ' I tell you that he's a clever fellow and a good fellow, and that you've consistently ill-treated and misunderstood him "

" I'm ashamed of myself, Dunham I always liked the boy really but I didn't want the others to say that I favoured him , and perhaps I——"

At this point there was a knock at the door, and the Fathead Smithson appeared in an agitated condition

" Please, sir, I was with The Celest—— with Langsdyke in Dow's Lane the other day, when he said I wasn't—to get me off And I'd sooner be expelled than Langsdyke, because I've only got an uncle, and he doesn't care much , -and Langsdyke's ill, you see, and it

mightn't be good for him, and he'll knock my head off if he hears about it But I thought as long as *one* of us was expelled——"

"Go away!" said Mr Liggers, irritably "No one's going to be expelled Don't make a fool of yourself. I say, Dunham," he added when Smithson had withdrawn, "I say—damn it all—this is rather touching, you know"

The following is an extract from a fumigated letter which The Celestial wrote to his sister Madge during the period of his convalescence

"Well, severity didn't do him, no more did kindness, but illness has made him just proper He brought me books and things and came to inquire about me every day And now that term's over he has stopped on and risked infection by keeping me company in the sanatorium. So I said to him last night, 'If you'll tell me what you like next term, I'll do it, sir, because you're too good a sort to have rows with.' And he said, 'So are you, old man.' So that'll be all right"

**BERNARD CAPES**  
**1864-1918**

## **THE HERO OF WATERLOO**

**C**OLONEL MANTON put up his rod and demanded to be set ashore. It had been his first experience of coarse fishing on the river and it had not proved to his taste. It was not that the perch had been distant or the chub unapproachable. On the contrary, the place having been ground-baited overnight, the sport had been excellent. It was the worms and one other thing which decided him. He had been present at Talavera, at Ciudad Rodrigo, at Badajoz, at Vittoria, at Quatre Bras, at Waterloo, he had seen as much carnage as most men, but this bloodless impaling of lob-worms on hooks, and then casting them, so transfixed, to lie writhing on the river bottom for an indefinite period at the end of a ledger-line, offended his sense of fitness. It was not, it seemed to him, playing the game. The worms had no chance, and they could not bite back. He hated to sit there and think of what was going on under the quiet water, and the reflection gained nothing in relish from the fact that, by refusing to soil his own hands with the viscous contortions of the creatures, he must appear, in delegating that operation to the boatman, to torture by deputy, like the most cowardly of Eastern despots. And so when, as presently happened, this same stolid deputy, in "disgorging" an obstinate hook from a barbel's throat, tore away—— But it is enough to say that the Colonel put down his rod and demanded there and then to be set ashore.

There was no gainsaying him, of course. It was sufficient that he was the guest of a distinguished General living at Datchet, but in addition to this the Colonel's personal actions invited no criticism. He fished—as he walked, as he rode, as he appeared on all secular occasions—in a dark-blue wasp-waisted frock-coat with frogs, in tight nankeen trousers strapped under neat insteps, in a stiff collar and full black stock, in a tall hat with a brim so crescented that its front peak looked like the "nasal" of a Norman helmet. And for the rest he carried himself and his white moustache with the conscious authority of a cock of a hundred fights.

The boatman put him ashore on the river-bank some half-mile below Datchet, towards which village he immediately addressed his steps. The path was lonely and unfrequented, and it gave the Colonel

some surprise to observe, as he turned a clump of bushes, a fashionable old beau toddling along in front of him. In a few moments the latter paused, nonplussed, at a stile, and the Colonel came up with him. The pedestrian was a man of uncouth bulk but distinguished mien. He wore a black frock-coat of a somewhat military cut, with a rich fur collar. Curly auburn locks, obviously artificial, showed beneath the brim of his glossy hat, and accented somewhat ghastfully the puffy pallor of a face whose texture betrayed its age. His eyes had a glutinous, half-blind appearance, his loose lower lip perpetually trembled. He peered at the new-comer, panting a good deal as if the sudden apparition had shaken his nerves.

"If I may venture, sir," said Colonel Manton, and proffered his arm. The other accepted it to mount the stile. It was an ungraceful business, and, once over, he stood with his hands to his sides, vibrating heavily, like a worn-out engine, to his own respirations. Presently he was sufficiently recovered to speak.

"A damned obstruction — a damned obstruction! Cannot I leave my carriage a moment to walk round by the water but this annoyance must appear in my path?"

"A villainous stile," said the Colonel. "We will indict it for a trespass." He was a reasonable man and he felt the absurdity of the complaint. But to his surprise his sarcasm missed fire.

"Do so, do so," said the old gentleman, and took his arm again, as it might have been his own walking-stick. They went on together, and in a little the stranger had opened a conversation with all the effrontery in the world. "My boy, what's your rank?" said he. "I perceive you are a soldier."

The officer stared, and drew himself up.

"Colonel Manton, sir, at your service," he answered distantly.

He was surprised, but the man was old, near seventy by his appearance, and very possibly from his cut a retired veteran like himself. Familiarity from a general, say, would be pardonable, and even kindly. Besides, he did not dislike the implied suggestion of juniority.

"Hey!" said the stranger—"retired?"

"Yes, sir, retired."

"Brevet rank?"

"Brevet be damned!" said Colonel Manton hotly. "I owe my promotion, sir, if you wish to know, to Waterloo."

The stranger glanced at him with a curiously sly look, and pinched the arm on which his own fingers rested.

"What!" he said, "were you there?"

"I had the honour, sir," said the Colonel, grandiloquently, "of playing my little part in that Homeric contest"

"Whose division, hey?"

"Picton's—Pack's brigade You are a little—you will excuse my saying it—particular"

"Certainly I will, my boy Wounded—hey?"

A distinct flush suffused the Colonel's cheek

"Wounded—yes," he replied shortly

The old fellow nudged him confidentially "Tell me," he said—"how?"

"Look here—you must forgive me, you know," exploded the Colonel, "but I must point out that we are strangers Still, as a fellow-campaigner—if that is the case—may I ask, sir, if you were at Waterloo?"

The other laughed enjoyingly "Was I?" he said "To be sure I was You had all good reason for knowing it"

Colonel Manton's eyes opened Here was a momentous implication Evidently he had to do with some great general of division, though the boast sounded a little extravagant and unmilitary He ran over in his mind a dozen possible names, but without success And then the thought occurred to him "Good reason for knowing it? What the devil! Is it possible he was on the other side?"

The idea seemed too preposterous for belief, the stranger was so obviously British Who in wonder's name could he be, then? Hill, Macdonnell, Saltoun, Uxbridge, Vandeleur, Somerset, Hackett?—all divisional or brigadier-generals He could not identify him, of his knowledge, with any one of these The Iron Duke himself? He had never been brought into very close personal contact with the great man, but naturally he was familiar with his features Could it be possible that time had so fused and blunted those that their characteristic contour had degenerated into this scarce distinguishable pulp? Prosperity, he knew, could play strange tricks with countenances, yet a volte-face so revolutionary seemed incredible And yet who else but the Duke had been on that day as indispensable as implied? But it was conceivable that some might have so regarded themselves—that certain heads might have been turned by their share in the success of so stupendous a victory

Colonel Manton had been living abroad on his half-pay for some years, and until the occasion of this visit during the summer of 1830,

had dwelt for long a stranger to his native land. He could but suppose that he had in a measure lost the clue, through subsequent developments, to old events. It remained clear only that he was in the presence of one who had, or believed himself to have, contributed signally to the success of the epoch-making battle. And that must be enough for him. He spoke thenceforth as a subordinate to his commanding officer.

"I beg your indulgence, sir," he said. "I have been absent from my country for a considerable time, and features once familiar elude me. You asked about my wound. It is a ridiculous matter, and I recall it without enthusiasm. The fact is that, when d'Erlon's guns were pounding us before the advance, a ball smashed the head of a sergeant standing near me, and one of the fellow's cursed double-teeth was driven into my neck. It was not enough to cripple my fighting power, but I would have given a dozen of my own to boast a more honourable scar."

The stranger chuckled.

"Scars are not the only guarantee of valour," he said. The Colonel ventured, "You brought away some of your own, sir?"

"No," said the old fellow. "No, Wellington and I got off scot-free."

The Colonel dared again. "Were you, may I ask, on his personal staff?"

"Well, yes," said the stranger, chuckling still more, "I suppose you might call it that."

Suppose? Colonel Manton gasped. It was positively a matter of history that not one of that staff had escaped death or mutilation. The other may have noticed his perplexity, for he turned on him with an air of sudden annoyance.

"You haven't the assurance to question my word, I hope, sir?" he demanded.

"Certainly not," answered the Colonel.

"I could give you convincing proof," said the stranger. "Did the Commander-in-Chief—now did he, or did he not—visit General Blücher at Wavre the night before the battle to make sure of his co-operation?"

"It is a disputed point, sir," said the Colonel. "I believe that even his Grace has been known to contradict himself in the matter, saying at one time that he would never have fought without Blücher's explicit promise to back him up, at another flatly contradicting the report that he saw the Prussian general on the night before the battle."

"And he did not, my boy," sniggered the old fellow triumphantly, "for his interview with him was after midnight, and therefore on the day of the battle I ought to know, for I sent him off there myself."

He cackled into such a spasm of laughter that the convulsion caught his wind

"O, my chest!" he wheezed and gasped, "my miserable chest! I'm the most wretched creature on earth But it's nothing, nothing—the youngest fellows are subject to it" He coughed and wiped his eyes with a heavily-scented handkerchief "Yes," he said presently, "yes, Wellington was a sound workaday general, a fine soldier, an inspired commissary, but of genius—h'm! We need only suggest, Manty, my boy, that he was well advanced The man at his elbow, hey? You need not mention it, you know, but the real hero of Waterloo—hey, d'ye see? Keep it to yourself, there were reasons against its being divulged—you understand? What, my boy!"

The Colonel stared before him as if hypnotised, he stumbled in his walk Was it possible to mistake the implication—that the laurels ought by rights to have adorned the brow of this stranger beside him? He felt like one whose faith had suddenly exploded of its own intensity, leaving his breast a blackened shell Could there actually have been another, of whom he had never heard, at the Duke's right hand on that tremendous day, the presiding but unconfessed genius of it? He had heard tell of the Corsican's little red familiar Was his great rival, were possibly all commanding intellects, so supernaturally provided?

He was really a simple man, with a mind ruled to certain prescriptive lines of conduct He glanced askance at his companion, who was smiling and murmuring to himself Who in Heaven's name could he be? and why had he selected him for his astounding confidence? For all his own fearless rectitude, an uncanny feeling began to possess him He was glad, in turning a corner, to see the end of the path, and the head of a waiting coachman showing above the hedge And the next moment they had emerged on to the village green

A barouche stood there, with a bare-headed gentleman standing at its door The liveries of the servants were scarlet, and a mounted man in a scarlet embroidered coat waited a little apart The gentleman came forward

"Will your Majesty be pleased to ascend?" he asked.

The King dropped the Colonel's arm, and appeared on the instant to forget all about him "Yes, Watty, yes, certainly, my boy," he said. "Is that the fiery chariot?"



## DESERT AIR

I

ON an evening of last summer I was dining in London at the Carlton with two men. One of them was an excellent type of young England, strong, healthy, athletic, and straightforward. The other was a clever London doctor who was building up a great practice in the West End. At dessert the conversation turned upon a then recent tragedy in which a great reputation had gone down, and young England spoke rather contemptuously of the victim, with the superior surprise human beings generally express about the sin which does not happen to be theirs.

"I can't understand it!" was his conclusion. "It's beyond me."

"Climate," said the doctor quietly.

"What?"

"Climate. Air."

Young England looked inexpressively astonished.

"But hang it all!" he exclaimed, "you don't mean to say change of air means change of nature?"

"Not to everyone. Not to you, perhaps. Have you travelled much?"

"Well, I've been to Paris for the Grand Prix, and to Monte——"

"For the gambling. That's hardly travelling. Now, I've studied this subject a little, quietly in Harley Street. I'm no traveller myself, but I have dozens of patients who are. And I'm convinced that the modern facilities for travel, besides giving an infinity of pleasure, bring about innumerable tragedies."

He turned to me.

"You go abroad a great deal. What do you say?"

"That you're perfectly right. And I'm prepared to affirm that, in highly-strung, imaginative, or overworked people change of climate does sometimes actually cause, or seem to cause, change of nature."

Young England, who was by no means highly-strung or imaginative, looked politely dubious, but the doctor was evidently pleased.

"An all ! " he cried

He glanced at me for an instant, then added

"You've got a case that proves it, at any rate to you, in your mind "

"Quite true "

"Can you give it us ? "

"Jove ! let's have it ! " exclaimed young England

"Certainly, if you like," I said "I don't know whether you ever heard of the Marnier affair ? "

Young England shook his head, but the doctor replied at once

"Three years ago, wasn't it ? "

"Four "

"And it happened in some remote place in the Sahara Desert ? "

"In Beni-Kouidar I was with Henry Marnier in Beni-Kouidar at the time."

"Go ahead ! " said young England more eagerly.

"Poor Marnier was not an old friend of mine, but an acquaintance whom I had met casually at Beni-Mora, which is known as a health resort "

"I send patients there sometimes," said the doctor

"The railway stops at Beni-Mora To reach Beni-Kouidar one must go on horse- or camel-back over between three and four hundred kilometres of desert, sleeping on the way at Travellers' Houses—Bordjs as they are called there Beni-Kouidar lies in the midst of immeasurable sands, and the air that blows through its palm gardens, and round its mosque towers, and down its alleys under the arcades, is startling dry as the finest champagne, almost fiercely pure and fresh, exhilarating—well, too exhilarating for certain people."

The doctor nodded

"Champagne goes very quickly to some heads," he interjected

"Beni-Kouidar has nothing to say to modern civilisation It is a wild and turbulent city, divided into quarters—the Arab quarter, the Jews' quarter, the freed negroes' quarter, and so on—and furthermore is infested at certain seasons by the Sahara nomads, who camp in filthy tents on the huge sand dunes round about, and sell rugs, burnouses, and Touareg work to the inhabitants, buying in return the dates for which the palms of Beni-Kouidar are celebrated

"I wanted to see a real Sahara city to which the Cook's tourist had not as yet penetrated, and I resolved to ride there from Beni-

Mora. When Henry Marnier heard of it he asked if he might accompany me

"Marnier was a young man who had recently left Oxford, and who had come out to Beni-Mora only a week before to see his mother, who was going through the sulphur cure. He was what is generally called a 'serious-minded young man', intellectual, inclined to grave reading and high thinking, totally devoid of frivolity, a little cold in manner and temperament, one would have sworn; in fact, a type of a very well-known kind of Oxford undergraduate, the kind that takes a good tutorship for a year or so after leaving the University, and then becomes a schoolmaster or a clergyman. Marnier, by the way, intended to take orders

"Now, this sort of young man is not precisely my sort, and especially not my sort in the Sahara Desert. But I did not want to be rude to Marnier, who was friendly and agreeable, and obviously anxious to increase his already considerable store of knowledge. So I put my inclinations in my pocket, and, with inward reluctance, I agreed

"We set off with Safti, my faithful one-eyed Arab guide, and after three long days of riding and talking—as I had feared—Maeterlinck and Tolstoy, Henley and Verlaine (this last being utterly condemned by Marnier as a man of weak character and degraded life), we saw the towers of Beni-Kouddar aspiring above the shifting sands, the tufted summits of the thousands of palm-trees, and heard the dull beating of drums and the cries of people borne to us over the spaces of which silence is the steady guardian.

"We were all pretty tired, but Marnier was specially done up. He had recently been working very hard for the 'first' with which he had left Oxford, and was not in good condition. We were therefore glad enough when we rode through the wide street thronged with natives, turned the corner into the great camel market, and finally dismounted before the door of the one inn, the 'Rendezvous des Amis,' a mean, dusty, one-story building, on whose dirty white wall was a crude painting of a preposterous haridan in a purple empire gown, pouring wine for a Zouave who was evidently afflicted with elephantiasis. Yet, tired as I was, I stepped out into the camel market for a moment before going into the house, emptied my lungs, and slowly filled them

"'What air!' I said to Marnier, who had followed me

"'It is extraordinary,' he answered in his rather dry tenor voice

'I should say like the best champagne, if I did not happen to be a teetotaler'

("The market, I must explain, was not at that moment in active operation")

"After a *bain de siège*—we both longed for total immersion—and some weak tea, in which I mingled a spoonful of rum, we felt better, but we reposed till dinner, and once again Marnier, in his habitually restrained and critical manner, discussed contemporary literature, and what Plato and Aristotle, judging by their writings, would have been likely to think of it. And once again I felt as if I were in the 'High' at Oxford, and was almost inclined to wish that Marnier was the rowdy type of undergrad who ducks people in water troughs and makes bonfires in quads"

"H'm!" said the doctor gravely. "Better, perhaps, if he had been"

"Much better," I answered. "At seven o'clock we ate a rather tough dinner in the small, bare *salle à manger*, on the red brick floor of which sand grains were lying. Our only companion was a bearded priest in a dirty soutane, the aumônier of Beni-Koudar, who sat at a little table apart, and greeted our entrance with a polite bow, but did not then speak to us."

"When the meal was ended, however, he joined us as we stood at the inn door looking out into the night. A moon was rising above the palms, and gilding the cupolas of the Bureau Arabe on the far side of the Market Square. A distant noise of tom-toms and African pipes was audible. And all down the hill to our left—for the land rose to where the inn stood—fires gleamed, and we could see half-naked figures passing and re-passing them, and others squatting beside them, looking like monks in their hooded burnouses."

"'You are going out, messieurs?' said the aumônier politely."

"I looked at Marnier."

"'You're too done up, I expect?' I said to him."

"His face was pale, and he certainly had the demeanour of a tired man."

"'No,' he answered. 'I should like a stroll in this wonderful air'."

"I turned to the priest."

"'Yes, monsieur,' I said."

"'I come here to take my meals, but I live at the edge of the

town. Perhaps you will permit me to accompany you for a little way'

" 'We shall be delighted, and we know nothing of Beni-Kouidar.'

" As we stepped out into the market Marnier paused to light his pipe But suddenly he threw away the match he had struck.

" 'No, it's a sin to smoke in this air,' he said

" And he drew a deep breath, looking at the round moon.

" The priest smiled

" 'I have lived here for four years,' he said, 'and cannot resist my cigar But you are right The air of Beni-Kouidar is extraordinary When first I came here it used to mount to my head like wine.'

" 'Bad for you, Marnier!' I said, laughing

" Then I added, to the aumônier

" 'My friend never drinks wine, and so ought to be peculiarly susceptible to such an influence.'

## II

" Opposite to the aumônier's dwelling was the great dancing-house of the town, and when we had bade him good-night, and turned to go back to the inn, I rather tentatively suggested to Marnier that, perhaps, it would be interesting to look in there for a moment

" 'All right,' he responded, in his most donnish manner 'But I expect it will be rather an unwashed crowd'

" Many native soldiers—the sort that used to be called Turcos—were gathered round the door We pushed our way through them, and entered The café was large, with big whit' pillars and a double row of divans in the middle, and divans rising in tiers all round On the left was a large doorway, in which gorgeously-dressed painted women, with gold crowns on their heads, were standing, smoking cigarettes, and laughing with the Arabs', and at the end farthest from the street entrance was a raised platform, on which sat three musicians—a wild-looking demon of a man blowing into an instrument with an immense funnel, and two men beating tom-toms The noise they made was terrific The piper wore a voluminous burnous, and as the dancers came in in pairs from the big doorway, which led into the court where they all live together, each in her separate little room with her own front door, they threw their door keys into the

hood that was attached to it As soon as they had finished dancing they went to the hood, and rummaged violently for them again And all the time the piper blew frantically into his instrument, and rocked himself about like a man in a convulsion

"We sat on one of the raised divans, with coffee before us on a wooden stool, and Marnier observed it all with a slightly supercilious coldness The women, who were dressed in different shades of red, and were the most amazing trollops I ever set eyes on, came and went in pairs, fluttered their painted fingers, twittered like startled birds, jumped and twirled, wriggled and revolved, and inclined their greasy foreheads to the impenetrable spectators, who stuck silver coins on to the perspiring flesh And Marnier sat and gazed at them with the aloofness of one who watches the creatures in puddle water through a microscope I could scarcely help laughing at him, but I wished him away For to me there was excitement, there was even a sort of ecstasy, in the utter barbarity of this spectacle, in the moving scarlet figures with their golden crowns and tufts of ostrich plumes, in the serried masses of turbaned and hooded spectators, in the rocking forms of the musicians, in the strident and ceaseless uproar that they made

"And through the doorway where the Turcos—I like the old name—crowded I saw the sand filtering in from the desert, and against the blackness of a solitary palm-tree, with leaves like giant Fatma hands, I saw the silver disc of the moon

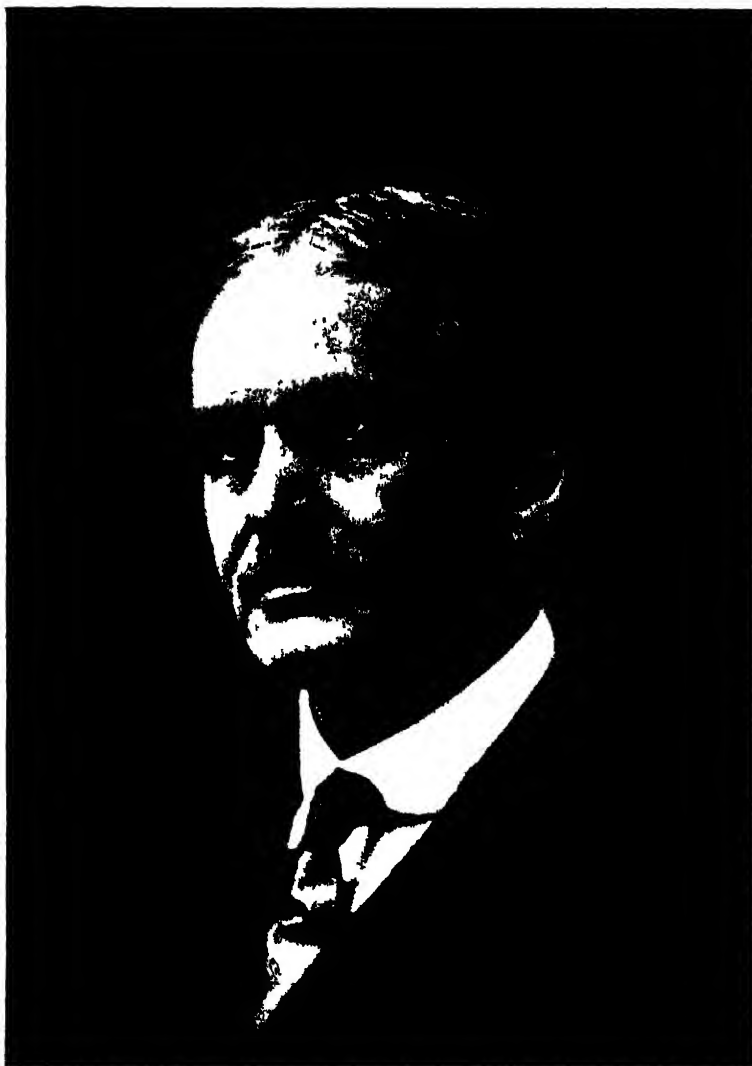
" 'I vote we go,' said Marnier's light tenor voice in my ear 'The atmosphere's awful in here'

" 'Very well,' I said

"I got up; but just then a girl, dressed in midnight purple embroidered with silver, came in from the doorway, and began to dance alone She was very young—fourteen, I found out afterwards—and, in contrast to the other women, extremely beautiful There were grace, seduction, mystery, and coquetry in her face and in all her movements Her long black eyes held fire and dreams Her fluttering hands seemed beckoning us to the realms of the thousand and one nights I stood where I had got up, and watched her

" 'I say, aren't we going?' said Marnier's voice in my ear

"I cursed the day when I had agreed to take him with me, leaped down to the earth, and struggled towards the door As we neared it the girl sidled down the room till she was exactly in front of Marnier Then she danced before him, smiling with her immense eyes, which



*Russell*

*Robert F. Hens*





she fixed steadily upon him, and bending forward her pretty head covered with a cloth of silver handkerchief

" ' Give her something,' I said to him, laughing, as he stared back at her grimly

" He thrust his hand into his pocket, found a franc, stuck it awkwardly against her oval forehead, and followed me out

" When we were in the sandy street he walked a few steps in silence, then stood still, and, to my surprise, stared back at the dancing-house Then he put his hand to his head

" ' Is the air having its alcoholic effect ? ' I asked in joke

" As I spoke a handsome Arab, splendidly dressed in a pale blue robe, red gaiters and boots, and a turban of fine muslin, spangled with gold, passed us slowly, going towards the dancing-house. He cast a glance full of suspicion and malice at Marnier

" ' What's up with that fellow ? ' I said, startled.

" The Arab went on, and at that moment the faithful Safti joined us He never left me long out of his sight in these outlandish places

" ' That is Batouch, Sidi, the brother of the Caïd of Beni-Kouddar,' he said ' Algia, the dancer to whom Monsieur Henri has just given money, is his *chère amie* But as the government has just made him a sheik, he dares not have her in his house for fear of the scandal So he has put her with the dancers That is why she dances, to deceive every one, not to make money She is not as the other dancers But every one knows, for Batouch is mad with jealousy He cannot bear that Algia should dance before strangers, but what can he do ? A sheik must not have a scandal in his dwelling '

" We walked on slowly When we got to the door of the ' Rendez-vous des Amis ' Marnier stood still again, and looked down the deserted, moonlit camel market

" ' I never knew air like this,' he said in a low voice

" And once more he expelled the air from his lungs, and drew in a long, slow breath, as a man does when he has finished his dumb-bell exercise in the morning

" ' Don't drink too much of it,' I said ' Remember what the aumônier told us ! '

" Marnier looked at me I thought there was something apprehensive in his eyes But he said nothing, and we turned in

" The next day I rode out with Safti into the desert to visit a sacred personage of great note in the Sahara, Sidi El Ahmed Ben Daoud Abderahmann To my relief Marnier declined to come He

said he was tired, and would stroll about the city. When we got back at sundown the innkeeper handed me a note. I opened it, and found it was from the aumônier, saying that he would be greatly obliged if I would call and see him on my return, as he had various little curiosities which he would be glad to show me. Marnier was not in the inn, and, as I had nothing particular to do, I walked at once to the aumônier's house. As I have said, it was the last in the town. The dancing-house was on the opposite side of the way, but the aumônier's dwelling jutted out a little farther into the desert, and looked full on a deep depression of soft sand bounded by a big dune, which loomed up like a couchant beast in the fading yellow light.

"The aumônier met me at his door, and escorted me into a pleasant room, where his collection of Arab weapons, coins, and old vases, cups, and various utensils, dug up, he told me, at Tlemcen, was arranged. But to my surprise he scarcely took time to show it to me before he said

" ' Though a stranger, may I venture to speak rather intimately to you, monsieur ? ' "

" ' Certainly, ' I replied, in some astonishment

" ' Your friend is young ' "

" ' Marnier ? ' "

" ' Is that his name ? Well, I would not leave him to stroll about too much alone, if I were you ' "

" ' Why, monsieur ? ' "

" ' He is likely to get into trouble. The people here are a wild and violent race. He would do well to bear in mind the saying of a traveller who knew the desert men better than most people. " If you want to be friendly with them, and safe among them, give cigarettes to the men, and leave the women alone " I see a good deal, monsieur, owing to the situation of my little house ' "

" I looked at him in silence. Then I said

" ' What have you seen ? ' "

" He led me to the door, and pointed towards the great dune beyond the dancing-house

" ' I saw your friend this afternoon talking there with one whom it is specially unsafe to be seen with in Beni-Kouidar ' "

" ' With whom ? ' "

" ' A dancer called Algia ' "

" ' Talking, monsieur ! Marnier knows no Arabic. ' "

" The aumônier pursed his lips in his black beard.

" 'The conversation appeared to be carried on by signs,' he responded 'That did not make it less but more dangerous'

" 'I'm afraid I was rude, and whistled softly

" 'Monsieur l'Aumônier,' I said, 'you must forgive me, but this air is certainly the very devil'

" He smiled, not without irony

" 'I became aware of that myself, monsieur, when first I came to live in Beni-Kouddar But I am a priest, and—well, monsieur, I was given the strength to say "Get thee behind me, Satan"'

" A softer look came into his sunburnt, wrinkled face

" 'Better take your friend away as soon as possible,' he added, 'or there will be trouble'

### III

" That night I found myself confronted by a Marnier whom I had never seen before The desert wine had gone to the lad's brain. That was certain No intonations of the Oxford don lurked in the voice No reminiscences of the Oxford 'High' clung about the manner A man sober and the same man drunk are scarcely more different than the Marnier who had ridden with me up the sandy street of Beni-Kouddar the previous day and the man who sat opposite to me at dinner in the 'Rendezvous des Amis' that night I knew in a moment that the aumônier was right, and that I must get the lad away at once from the intoxicant which nature poured out over this far-away city His eyes were shining feverishly, and when I mentioned Mr Ruskin in a casual way he looked unutterably bored

" 'Ruskin and all those fellows seem awfully slow and out of place here,' he exclaimed 'One doesn't want to bother about them in the Sahara'

" I changed the subject

" 'There doesn't seem very much to see here,' I said carelessly 'We might get away the day after to-morrow, don't you think?'

" He drew his brows down

" 'The horses won't be sufficiently rested,' he said curtly

" 'Oh yes, I fancy they will'

" 'Well, I don't fancy I shall The long ride took it out of me'

" 'Turn in to-night, then, directly after dinner'

" He looked at me with sharp suspicion I met his gaze blandly.

" 'I mean to,' he said after a short pause

" I knew he was telling me a lie, but I only said ' That's right ! ' and resolved to keep an eye on him

" Directly dinner was over he sprang up from the table

" ' Good-night ! ' he said

" And before I could reply he was out of the *salle à manger*, and I heard him tramp along the brick floor of the passage, go into his room, and bang the door

" The aumônier was getting up from his little table, and shaking the crumbs from his soutane

" ' You are quite right, monsieur,' I said to him ' I must get my friend away '

" ' I shall be sorry to lose you,' replied the good priest ' But—desert air, desert air ! '

" He shook his head, half wistfully, half laughingly, bowed, put on his broad-brimmed hat, and went out.

" After a moment I followed him I stood in the doorway of the inn, and lit a cigar I knew Marnier was not going to bed, and meant to catch him when he came out, and join him In common politeness he could scarcely refuse my company, since he had asked me as a favour to let him come with me to Beni-Kowdar I waited, watching the moon rise, till my cigar was smoked out Then I lit another Still he did not come I heard the distant throb of tom-toms beyond the Bureau Arabe in the quarter of the freed negroes They were having a fantasia I began to think that I must have been mistaken, and that Marnier had really turned in So much the better. The ash dropped from the stump of my second cigar, and the deserted camel market was flooded with silver from the moon-rays I knew there was only one door to the inn Slowly I lit a third cigar

" A large cloud went over the face of the moon A gust of wind struck my face Suddenly the night had changed The moon looked forth again, and was again obscured A second gust struck me like a blow, and my face was stung by a multitude of sand grains I heard steps behind me in the brick passage, turned swiftly, and saw the landlord

" ' I must shut the door, m'sieu,' he said ' There's a bad sand-storm coming up '

" As he spoke the wind roared, and over the camel market a thick fog seemed to fall abruptly It was a sheet of sand from the surrounding dunes I threw away my cigar, stepped into the passage, and the landlord banged the door, and drove home the heavy bolts

" Then I went to Marnier's room, and knocked I felt sure he was there, but I thought I would make sure before going to my room

" No answer

" I knocked again loudly

" Again no answer

" Then I turned the handle, and entered

" The room was empty I glanced round quickly The small window was open All the windows of the inn were barred, but, as I learned later, a bar in Marnier's had been broken, and was not yet replaced when we arrived at Beni-Kouidar In consequence of this it was possible to squeeze through into the arcade outside This was what Marnier had done. My precise, gentlemanly, reserved, and methodical acquaintance had deliberately given me the slip by sneaking out of a window like a schoolboy, and creeping round the edge of the inn to the ditch that lay in the shadow of the sand dunes. As I realised this I realised his danger

" I ran to my room, fetched my revolver, slipped it into my pocket, and hurried to the front door The landlord heard me trying to undo the bolts, and came out protesting

" ' M'sieu cannot go out into the storm.'

" ' I must '

" ' But M'sieu does not know what Beni-Kouidar is like when the sand is blown on the wind It is *enfer* Besides, it is not safe In the darkness m'sieu may receive a *mauvais coup* '

" ' Make haste, please, and open the door I am going to fetch my friend ' He pulled the bolts, grumbling and swearing, and I went out into *enfer* For he was right. A sandstorm at night in Beni-Kouidar is hell

" Luckily, Safti joined me mysteriously from the deuce knows where, and we staggered to the dancing-house somehow, and struggled in, blinded, our faces scored, our clothes heavy with sand, our pockets, our very boots, weighed down with it

" The tom-toms were roaring, the pipe was yelling, blown by the frantic demon with his hood full of latch-keys, the impassable, bearded faces were watching the painted women who, in their red garments and their golden crowns, promenaded down the earthen floor, between the divans, fluttering their dyed fingers, smiling grotesquely like idols, bending forward their greasy foreheads to receive the tribute of their admirers I looked swiftly over the mob Marnier was not in it

I went towards the doorway on the left which gave on to the court of the dancers Safti caught hold of my arm

" ' It is not safe to go in there on such a night, Sidi There are no lamps It is black as a tomb And no one can tell who may be there Nomads, perhaps, men of evil from the south Many murders have been done in the court on black nights, and no one can say who has done them For all the time men go in and out to the rooms of the dancers ' "

" ' Nevertheless, Safti, I must—— ' "

" I stopped speaking, for at this moment Batouch, the brother of the Caïd of Beni-Kouidar, came slowly in through the doorway from the blackness of the sand-swept court There was a strange smile on his handsome face, and he was caressing his black beard gently with one delicate hand He saw me, smiled more till I caught the gleam of his white teeth, passed on into the dancing-house, sat down on a divan, and called for coffee I could not take my eyes from him Every movement he made fascinated me He drew from his pale blue robe a silver box, opened it, lifted out a pinch of tobacco, and began carefully to roll a cigarette And all the time he smiled

" A glacial cold crept over my body As he lit his cigarette I caught hold of Safti, and hurried through the doorway into the blackness of the whirling sand "

Here I stopped " Well ? " said young England " Well ? "

The doctor did not speak

" Well," I answered, " Algia danced that night While she was dancing we found a dead body in the court It was Marnier's A knife had been thrust into him from behind ! "

" Ah ! " said the doctor

" But——" exclaimed young England, " it was that fellow ? It was Batouch ? "

I shrugged my shoulders " Nobody ever found out who did it "

" Well, but of course——"

He checked himself, and an expression of admiration dawned slowly over his healthy, handsome face

" I say," he said, " to be able to roll a cigarette directly afterwards ! What infernal cheek ! "

" Desert air ! " I replied " My dear chap—desert air ! "

The doctor nodded

## THE JUDGMENT OF PARIS

**I**N the summer of the memorable year —, but the date doesn't matter, Robichon and Quinquart both paid court to Mademoiselle Brouette. Mademoiselle Brouette was a captivating actress, Robichon and Quinquart were the most comic of comedians; and all three were members of the Théâtre Suprême.

Robichon was such an idol of the public's that they used to laugh before he uttered the first word of his rôle, and Quinquart was so vastly popular that his silence threw the audience into convulsions.

Professional rivalry apart, the two were good friends, although they were suitors for the same lady, and thus was doubtless due to the fact that the lady favoured the robust Robichon no more than she favoured the skinny Quinquart. She flirted with them equally—and at last, when each of them had plagued her beyond endurance, she promised in a pet that she would marry the one that was the better actor.

*Tiens!* Not a player on the stage, not a critic on the Press, could quite make up his mind which the better actor was. Only Suzanne Brouette could have said anything so tantalising.

"But how shall we decide the point, Suzanne?" stammered Robichon helplessly. "Whose pronouncement will you accept?"

"How can the question be settled?" queried Quinquart, dismayed. "Who shall be the judge?"

"Paris shall be the judge," affirmed Suzanne. "We are the servants of the public—I will take the public's word!"

Of course she was as pretty as a picture, or she couldn't have done these things.

Then poor Quinquart withdrew, plunged in reverie. So did Robichon. Quinquart reflected that she had been talking through her expensive hat. Robichon was of the same opinion. The public lauded them both, was no less generous to one than to the other—to wait for the judgment of Paris appeared equivalent to postponing

the matter *sine die* No way out presented itself to Quinquart None occurred to Robichon

"*Mon vieux*," said the latter, as they sat on the terrace of their favourite café a day or two before the annual vacation, "let us discuss this amicably Have a cigarette! You are an actor, therefore you consider yourself more talented than I I, too, am an actor, therefore I regard you as less gifted than myself So much for our artistic standpoints! But we are also men of the world, and it must be obvious to both of us that we might go on being funny until we reached our death-beds without demonstrating the supremacy of either *Enfin*, our only hope lies in versatility—the conqueror must distinguish himself in a solemn part!" He viewed the other with complacency, for the quaint Quinquart had been designed for a droll by nature

"Right!" said Quinquart He contemplated his colleague with satisfaction, for it was impossible to fancy the fat Robichon in tragedy

"I perceive only one drawback to the plan," continued Robichon "The management will never consent to accord us a chance Is it not always so in the theatre? One succeeds in a certain line of business and one must be resigned to play that line as long as one lives If my earliest success had been scored as a villain of melodrama, it would be believed that I was competent to enact nothing but villains of melodrama, it happened that I made a hit as a comedian, wherefore nobody will credit that I am capable of anything but being comic"

"Same here!" concurred Quinquart. "Well, then, what do you propose?"

Robichon mused "Since we shall not be allowed to do ourselves justice on the stage, we must find an opportunity off it!"

"A private performance? Good! Yet, if it is a private performance, how is Paris to be the judge?"

"Ah," murmured Robichon, "that is certainly a stumbling-block"

They sipped their *apéritifs* moodily Many heads were turned towards the little table where they sat "There are Quinquart and Robichon, how amusing they always are!" said passers-by, little guessing the anxiety at the laughter-makers' hearts

"What's to be done?" sighed Quinquart at last

Robichon shrugged his fat shoulders, with a frown



Both were too absorbed to notice that, after a glance of recognition, one of the pedestrians had paused, and was still regarding them irresolutely. He was a tall, burly man, habited in rusty black, and the next moment, as if finding courage, he stepped forward and spoke.

"Gentlemen, I ask pardon for the liberty I take—impulse urges me to seek your professional advice! I am in a position to pay a moderate fee. Will you permit me to explain myself?"

"Monsieur," returned Robichon, "we are in deep consideration of our latest parts. We shall be pleased to give you our attention at some other time."

"Alas!" persisted the newcomer, "with me time presses. I, too, am considering my latest part—and it will be the only speaking part I have ever played, though I have been 'appearing' for twenty years."

"What! You have been a super for twenty years?" said Quinquart, grimacing.

"No, monsieur," replied the stranger grimly. "I have been the public executioner, and I am going to lecture on the horrors of the post I have resigned."

The two comedians stared at him aghast. Across the sunlit terrace seemed to have fallen the black shadow of the guillotine.

"I am Jacques Roux," the man went on. "I am 'trying it on the dog' at Appeville-sous-Bois next week, and I have what you gentlemen call 'stage fright'—I, who never knew what nervousness meant before! Is it not queer? As often as I rehearse walking on to the platform, I feel myself to be all arms and legs, I don't know what to do with them. Formerly, I scarcely remembered my arms and legs, but, of course, my attention used to be engaged by the other fellow's head. Well, it struck me that you might consent to give me a few hints in deportment. Probably one lesson would suffice."

"Sit down," said Robichon. "Why did you abandon your official position?"

"Because I awakened to the truth," Roux answered. "I no longer agree with capital punishment, it is a crime that should be abolished."

"The scruples of conscience, *hein*?"

"That is it."

"Fine!" said Robichon. "What dramatic lines such a lecture might contain! And of what is it to consist?"

"It is to consist of the history of my life—my youth, my poverty, my experiences as executioner, and my remorse"

"Magnificent!" said Robichon "The spectres of your victims pursue you even to the platform Your voice fails you, your eyes start from your head in terror You gasp for mercy—and imagination splashes your outstretched hands with gore The audience thrill, women swoon, strong men are breathless with emotion" Suddenly he smote the table with his big fist, and little Quinquart nearly fell off his chair, for he divined the inspiration of his rival "Listen!" cried Robichon, "are you known in Appeville-sous-Bois?"

"My name is known, yes"

"Bah! I mean are you known personally, have you acquaintances there?"

"Oh no But why?"

"There will be nobody to recognise you?"

"It is very unlikely in such a place"

"What do you estimate that your profits will amount to?"

"It is only a small hall, and the prices are cheap Perhaps two hundred and fifty francs"

"And you are nervous, you would like to postpone your debut?"

"I should not be sorry, I admit But, again, why?"

"I will tell you why—I offer you five hundred francs to let me take your place!"

"Monsieur?"

"Is it a bargain?"

"I do not understand!"

"I have a whim to figure in a solemn part You can explain next day that you missed your train—that you were ill, there are a dozen explanations that can be made, you will not be supposed to know that I personated you—the responsibility for that is mine. What do you say?"

"It is worth double the money," demurred the man

"Not a bit of it! All the Press will shout the story of my practical joke—Paris will be astounded that I, Robichon, lectured as Jacques Roux and curdled an audience's blood Millions will speak of your intended lecture tour who otherwise would never have heard of it I am giving you the grandest advertisement, and paying you for it, besides. *Enfin*, I will throw a deportment lesson in! Is it agreed?"

"Agreed, monsieur!" said Roux

Oh, the trepidation of Quinquart! Who could eclipse Robichon if his performance of the part equalled his conception of it? At the theatre that evening Quinquart followed Suzanne about the wings pathetically. He was garbed like a buffoon, but he felt like Romeo. The throng that applauded his capers were far from suspecting the romantic longings under his scarlet wig. For the first time in his life he was thankful that the author hadn't given him more to do.

And, oh, the excitement of Robichon! He was to put his powers to a tremendous test, and if he made the effect that he anticipated he had no fear of Quinquart's going one better. Suzanne, to whom he whispered his project proudly, announced an intention of being present to "see the fun." Quinquart also promised to be there. Robichon sat up all night preparing his lecture.

If you wish to know whether Suzanne rejoiced at the prospect of his winning her, history is not definite on the point, but some chroniclers assert that at this period she made more than usual of Quinquart, who had developed a hump as big as the Panthéon.

And they all went to Appeville-sous-Bois.

Though no one in the town was likely to know the features of the executioner, it was to be remembered that people there might know the actor's, and Robichon had "made up" to resemble Roux as closely as possible. Arriving at the humble hall, he was greeted by the lessee, heard that a "good house" was expected, and smoked a cigarette in the retiring-room while the audience assembled.

At eight o'clock the lessee reappeared.

"All is ready, Monsieur Roux," he said.

Robichon rose.

He saw Suzanne and Quinquart in the third row, and was tempted to wink at them.

"Ladies and gentlemen——"

All eyes were riveted on him as he began, even the voice of the "executioner" exercised a morbid fascination over the crowd. The men nudged their neighbours appreciatively, and women gazed at him, half horrified, half charmed.

The opening of his address was quiet enough—there was even a humorous element in it, as he narrated imaginary experiences of his boyhood. People tittered, and then glanced at one another with an apologetic air, as if shocked at such a monster's daring to amuse them.

Suzanne whispered to Quinquart "Too cheerful, he hasn't struck the right note!" Quinquart whispered back gloomily "Wait; he may be playing for the contrast!"

And Quinquart's assumption was correct. Gradually the cheerfulness faded from the speaker's voice, the humorous incidents were past. Gruesome, hideous, grew the anecdotes. The hall shivered. Necks were craned, and white faces twitched suspensively. He dwelt on the agonies of the Condemned, he recited crimes in detail, he mirrored the last moments before the blade fell. He shrieked his remorse, his lacerating remorse. "I am a murderer," he sobbed, and in the hall one might have heard a pin drop.

There was no applause when he finished—that set the seal on his success, he bowed and withdrew amid tense silence. Still none moved in the hall—until, with a rush, the representatives of the Press sped forth to proclaim Jacques Roux an unparalleled sensation.

The triumph of Robichon! How generous were the congratulations of Quinquart, and how sweet the admiring tributes of Suzanne! And there was another compliment to come—nothing less than a card from the Marquis de Thevenin, requesting an interview at his home.

"Ah!" exclaimed Robichon, enraptured, "an invitation from a noble! That proves the effect I made, *hein?*"

"Who may he be?" inquired Quinquart. "I never heard of the Marquis de Thevenin!"

"It is immaterial whether you have heard of him," replied Robichon. "He is a marquis, and he desires to converse with me! It is an honour that one must appreciate. I shall assuredly go!"

And, being a bit of a snob, he sought a fiacre in high feather.

The drive was short, and when the cab stopped he was distinctly taken aback to perceive the unpretentious aspect of the nobleman's abode. It was, indeed, nothing better than a lodging. A peasant admitted him, and the room to which he was ushered boasted no warmer hospitality than a couple of candles and a decanter of wine. However, the sconces were massive silver. Monsieur le marquis, he was informed, had been suddenly compelled to summon his physician, and begged that Monsieur Roux would allow him a few minutes' grace.

Robichon ardently admired the candlesticks, but began to think he might have supped more cosily with Suzanne.

It was a long time before the door opened.

The Marquis de Thevenin was old—so old that he seemed to be falling to pieces as he tottered forward. His skin was yellow and shrivelled, his mouth sunken, his hair sparse and grey, and from this weird face peered strange eyes—the eyes of a fanatic.

"Monsieur, I owe you many apologies for my delay," he wheezed. "My unaccustomed exertion this evening fatigued me, and on my return from the hall I found it necessary to see my doctor. Your lecture was wonderful, Monsieur Roux—most interesting and instructive, I shall never forget it."

Robichon bowed his acknowledgments.

"Sit down, Monsieur Roux, do not stand! Let me offer you some wine. I am forbidden to touch it myself. I am a poor host, but my age must be my excuse."

"To be the guest of monsieur le marquis," murmured Robichon, "is a privilege, an honour, which—er——"

"Ah," sighed the marquis, "I shall very soon be in the Republic where all men are really equals and the only masters are the worms. My reason for requesting you to come was to speak of your unfortunate experiences—of a certain unfortunate experience in particular. You referred in your lecture to the execution of one called 'Victor Lesueur.' He died game, *hein*?"

"As plucky a soul as I ever dispatched!" said Robichon, savouring the burgundy.

"Ah! Not a tremor? He strode to the guillotine like a man?"

"Like a hero!" said Robichon, who knew nothing about him.

"That was fine," said the marquis, "that was as it should be! You have never known a prisoner to die more bravely?" There was a note of pride in his voice that was unmistakable.

"I shall always recall his courage with respect," declared Robichon, mystified.

"Did you respect it at the time?"

"Pardon, monsieur le marquis?"

"I inquire if you respected it at the time, did you spare him all needless suffering?"

"There is no suffering," said Robichon. "So swift is the knife that——"

The host made a gesture of impatience. "I refer to mental suffering. Cannot you realise the emotions of an innocent man condemned to a shameful death?"

"Innocent? As for that, they all say that they are innocent"

"I do not doubt it Victor, however, spoke the truth I know it He was my son"

"Your son?" faltered Robichon, aghast

"My only son—the only soul I loved on earth. Yes, he was innocent, Monsieur Roux And it was you who butchered him—he died by your hands!"

"I—I was but the instrument of the law," stammered Robichon. "I was not responsible for his fate, myself"

"You have given a masterly lecture, Monsieur Roux," said the marquis musingly "I find myself in agreement with all that you said in it—'you are his murderer' I hope the wine is to your taste, Monsieur Roux? Do not spare it!"

"The wine?" gasped the actor. He started to his feet, trembling—he understood

"It is poisoned," said the old man calmly "In an hour you will be dead"

"Great Heavens!" moaned Robichon Already he was conscious of a strange sensation—his blood was chilled, his limbs were weighted, there were shadows before his eyes

"Oh! I have no fear of you," continued the other, "I am feeble, I could not defend myself, but your violence would avail you nothing Fight, or faint, as you please—you are doomed"

For some seconds they stared at each other dumbly—the actor paralysed by terror, the host wearing the smile of a lunatic And then the "lunatic" slowly took court-plaster from his teeth, and removed features, and lifted a wig

And when the whole story was published, a delighted Paris awarded the palm to Quinquart without a dissentient voice, for while Robichon had duped an audience, Quinquart had duped Robichon himself

Robichon bought the silver candlesticks, which had been hired for the occasion, and he presented them to Quinquart and Suzanne on their wedding-day

## THE LITTLE BROWN 'BUS

**W**EST India Dock Road is half inclined to put up its shutters, but reluctant to do this—albeit the hour is late—because foreign sailors, much more at sea here than when on the ocean, are still loafing on the edge of the pavement. The shops have everything a sea-going man may desire, from bars of hard yellow soap and fur caps and scarlet pocket-handkerchiefs to chromos of smiling young women in hats of the early 'eighties, the job lots of literature tied up with a boot-lace are calculated to satisfy nearly every taste. Outside the long red Asiatic Home and on its broad steps a few melancholy Chinamen stand, with queues carefully twisted up and pinned under their blue linen caps. This because the Limehouse boy has a weakness for pulling a pig-tail when he sees one, crying "Shawp!" and running away. Up Millwall way they are carrying round baskets of vegetables yoked over the shoulders. By the side of the tram terminus, and near the red-eyed fire-station, stands the 'bus. A little brown 'bus, with yellow wheels, there for the convenience of those whom circumstances compel to go to the Isle of Dogs.

"Right for Singapore, cap'en?"

"Jump in," says the driver from the pavement, making one more attempt to light his pipe.

"Change anywheres, cap'en?"

"Yes," replies the driver curtly, "you'll have to change a lot 'fore you get on board your ship."

"Not cross, are you, cap'en?"

"Look here, my lad," says the driver, goaded by this inquiry. "You get into that blooming 'bus and take your seat and shut your head. That's all you've got to do."

"I've seen your face somewhere before," says the peak-capped sailor. "Any relation to old Frank Macey that used to live at Devonport?" Sulky reply in the negative. "Then 'ave a cigar," says the sailor genially. "Put your pipe in your hat and have something to smoke. Lor' bless my soul, I am glad to meet you. How's the missus?"

Driver, accepting two pale brown cigars from the envelope offered,

answers that he never had a missus, and expresses a pious hope that, with the help of Providence and his own acuteness, he never may

A piano organ starts one of Sousa's marches, and the sailor, encouraged by the comparative friendliness of the driver, solicits the favour of his hand for a waltz, but here the driver draws the line, and with the assistance of a strap cranes himself up into his seat, giving the sailor renewed advice to secure a place inside, which the sailor does, hailing the passengers with a sea-faring salutation and lurching into the one vacant seat more by accident than design. The little brown 'bus turns and goes across the tram lines

"Well," says the friendly sailor, "how are we all getting on, this voy'ge?" Some of the passengers are sleepy and some are thoughtful, the sailor, closing one eye, selects a quiet, puss-headed Japanese "Very glad to hear," he says, laying a hand on the other's knee, "that me and old Solsbury managed that little affair all right. We're chums, ain't we?"

The short Japanese sailor, with N Y K on his collar, smiles and nods "Very well, then!" says the sailor, with an injured air, "why not shake hands? Has anybody been telling you anything 'bout me? Because if so——" The Japanese accepts the large hand "That's better!" remarks the sailor, restored to good temper "Now, having gone so fur, I should like to go a bit further and shake 'ands with everybody—just to show there's no ill-feeling"

The little 'bus swerves round between the high walls that border the commencement of West Ferry Road "There! Now you can all say you've shook 'ands with a honest seafaring man"

"I sha'n't brag about it," remarks a stout woman opposite

"Oh, mother!" protests the sailor tearfully, "don't be so 'arsh with your blue-eyed boy"

"Blue-eyed nuisance," amends the stout woman

"There's a nice parent for you! Bring up a mother in the way she should go, and when she grows old—— Anybody got any objection to my singing a song?"

"Yes," say the other passengers with unanimity, "we have."

"You ~~am~~ so fond of me as you used to be," remarks the sailor regretfully "Ever since that affair out at Valp'raiso you all seem different somehow 'Oh, thou 'ast changed, my darling,'" sings the sailor, "'Thou smil'st no more at me, Thou 'ast no word of fond farewell, As I put out to '—Way—ho!"



The little 'bus rattles across a wooden bridge separating the docks from the river, the passengers find coppers and hand up their pennies through a hole in the roof to the driver. Some want change and this makes for conversation. One spare, melancholy woman, who has been marketing, with a shining black bag, the lock of which has long since refused to perform any of the duties of a lock, deplores the price of bread, and says (with determination) that she has really made up her mind if it goes much higher—well (despairingly), she does not know what she shall do. From which the conversation goes by a rapid stage to the difficulty that the thin lady has with her youngest boy, who has lately been going to theatres, the other beats this with a deplorable story of her uncle John, who went in for religion.

"It all goes to show," says this lady, as she pulls the strap and prepares to alight at Glengall Road, "that it's a mistake to go to either extreme, the 'appy mejum's my motto. Good-night, all! Don't be late in the morning."

The Japanese also descends here, to disappear in the meagrely-lighted streets, and on the talkative sailor, who has been asleep, discovering this, he weeps and declares that he has not a friend left in the world, that he is forsaken and alone, for two pins he would—If only he had some one to love him! If only some tidy, respectable woman, with a bit put by in the Savings Bank, would come to him and say, "Jim Allwright, give up seafaring life and settle down on shore and keep an eye on the shop and entertain your friends with a glass now and again," why, then he would say, "Done with you!" and give the old ship the chuck without the least hesitation.

"I'm the most reas'nable, good-tempered man alive," remarks the sailor contentedly. "Nothing ever upset me. I take everything as it comes. What you all getting out for?"

"Because," explains one of the descending passengers politely, "because we can't go any further. That's why!"

"And a dashed good reason, too," cries the sailor agreeably. "Goo' ni' everybody. Goblessye."

The spare, thin old woman stands on the edge of the pavement, watching him as he goes. The driver of the little brown 'bus announces his intention of utilising the minutes of waiting before the return journey by going into the tavern in order to get the right time, the bystanders ignore the hint, and he goes alone.

"I used to have a son that was that way inclined," says the thin woman, rather wistfully, "only he was never funny with it."

**LAURENCE HOUSMAN**

**B. 1865**

## **INSIDE-OUT**

### **THE STORY OF BUNDER-RUNDER, THE JAILBIRD**

**B**UNDER-RUNDER was in jail. He was there for having talked too much, for saying things which the owners of the jail did not at all like, and which those who did not own the jail liked only too well.

The people of the country did not own the jail, that you must quite understand. It was owned by those of another country, the natives only paid for it. That was Bunder-Runder's complaint, or one of them. He did not yet know how good it was for a people not to own jails at all, and how much better it was to be in a jail than to own one. Would he ever find that out, do you think? What can a jail teach one?

In this jail Bunder-Runder was to remain for ten years. He was a young man, strong, rather beautiful. Women loved to look at him. They laughed when they saw him put forth his strength easily to do them a service, they laughed more when they put their children into his arms for him to play with. He had not yet any children of his own. That was soon to have been—love, marriage, and home. The vision he had long had of them was then to become a dear, kind, foolish reality, a little world of his own to shape and cherish and make grow, sweeter and more beautiful than all the bigger world around him. But now, no. That little world, on the making of which his mind had been bent, had fallen from his hand, shattered.

Ten years!

"When I come out," Bunder-Runder said to himself, "I shall be old. Every one will have forgotten me. It will be like another world, my thoughts will not have gone into it, or anything I have done, I shall not belong to it. I shall be old, but I shall have made nothing." And as he thought thus, his very blood seemed to be weeping—the warm, swift blood which ran strenuously through him, touching as with tears the heart and head and feet and hands, which henceforth were to be useless.

Every time he began thinking, grief took hold of his thoughts and drew them to the same end.

"I am shut up in walls," he cried. "It were better that I were

dead " Just as his blood went weeping through his body, so through his brain his thoughts went weeping from place to place, round and round wearily they went, beating a high-road for grief to travel by.

After he had been in prison for a while, food was brought to him, and he ate, but he did not know why he ate

" I am eating only to become old," he said to himself. " What good is that to me ? " He left off eating

But presently he grew so hungry that food seemed good to him again, and time not so long or so vain a thing as dying without having learned all that there was to learn

So when food was again brought to him he ate, sitting to it in seemly fashion, with thoughts turned aside from grief for a while to the strange beauty and brotherhood of things which grew and were serviceable to man

Then his mind went out to the rice-fields, green and waving and changing colour toward ripeness from day to day, changing, too, as the light fell on them, morning or evening, from east or west, and at night, under moon and stars, more wonderfully changed still, and always different, yet always inwardly the same

But as soon as he had finished eating, his thoughts came back to him with a shock, and he remembered that he was a prisoner

" I shall see the rice-fields shining no more," he said, " till I am old Then they will have ceased to shine, for then with my old eyes I shall no longer see them " And turning his face to the wall, he wept It was always the same wall his thoughts came back to

The same wall ! How long had that wall been there ? How had it come ? Who were the men that had built it ? He began to look at and to examine it It was strong, but it was not very old, not so old, he thought, as his own father Yet it seemed older, for already within its narrow space many young lives had pined and faded and grown old waiting for freedom

Then, as he bethought him, he knew how it had come, and what men had had the building of it They were his own brothers, his countrymen, and they, not gladly or willingly, but being ordered to it and for payment, had built this wall to be a prison for themselves and others They had drawn clay from the beds of dried rivers, they had made bricks, they had hewn stone and timber, they had mixed plaster and mortar, they had reared up beam and roof, cutting off light and air from the space below, dividing it into cells, and now into this space below he, their brother, had come to be kept, wasted and useless, to

bury bit by bit, one day at a time, with nothing of change to make one seem different from another, the ten most beautiful years of his life, with all their gladness taken out of them

"Oh, Brothers, why have you done this to me?" he cried.

And suddenly his own thoughts answered for them

"Because we could not help ourselves, because we are all broken parts of that which was meant to be one whole. All over the world men are building walls, dividing themselves each from each, through ignorance and cruelty and fear. Because they don't know, that is why people are afraid of one another, and being afraid, they become cruel. That is why they build walls, not here only. All over the world it is the same—walls, walls. As walls grow rotten and old, as long as fear lasts, they will make us build others in place of them."

Bunder-Runder laid his hand on his prison-wall, he felt the strength and the depth of it, how well it was built, what a lot of brick and stone lay there, imprisoned like himself, but for much longer a time. Of that imprisonment not ten or twenty or fifty years would see the end.

"Brothers," said Bunder-Runder, "I am sorry for you. For your setting free is further away than mine, before you even begin to be old I shall be dead. Old age is good, is it not? But it is so far away."

Thus to his prison-wall he spoke, pitying it.

Suddenly he had a thought. It stood up and looked at him. It seemed to be standing only on one foot, on the very point of a toe, as if to show, even without motion, how light and quick and alert it could be. Then it seemed as though it lifted a hand and beckoned to him.

"Let us go out!" it said.

"How can one go out through this wall?" said Bunder-Runder.  
"We are in prison."

"There is no wall that I cannot get through," said his thought. It gave a flick of its foot, and was gone.

A moment later, and it was back again.

"Outside there is sunshine," it said.

"Yes," said Bunder-Runder, very attentive.

"There has been rain," his thought went on. "The wells are all full, the streams are running down from the hills, the frogs are singing in the marshes, and the rice-fields are beginning to look green."

"I know," said Bunder-Runder.

Other thoughts began cropping up thick and fast, in and out they went. It was quite true that there was no wall they could not get through. They began to crowd in on him. Bunder-Runder let them

come and go again just as they liked. He made them all welcome. If they wished to stay, they stayed, if they wished to go, they went.

Bunder-Runder sat in a sort of dream.

"This wall is wearing thin," he said to himself and laughed, while quicker and quicker his thoughts went in and out.

Presently he began singing. First he began imitating the song of the frogs, then of the birds. Hearing so much noise going on within, one of the jailers looked in on him. But Bunder-Runder was outside, and did not see him. Bunder-Runder was up in the hills. He had climbed quite high, he was looking down on the plain, he could see all the streams shining away through the grain-fields, he could see men driving bullocks along the road, he could hear them call as they passed to other men working in the fields, he could hear——

"Hi, you!" cried his jailer for the third time. "Not so much noise in there!"

Bunder-Runder came back with a bound, and sat cross-legged, smiling up at the eye which looked in on him through the hole in the door.

"High and mighty and merciful, I beg pardon," said Bunder-Runder respectfully, "I forgot myself, I did not remember where I was. It is a beautiful day, is it not?"

The jailer grunted and withdrew, and Bunder-Runder was off again. He came back to his cell to sleep, quite tired, but most wonderfully refreshed. Truly, as he had said, it had been a beautiful day.

After that the days grew more and more beautiful. In and out went his thoughts, they never left him alone. He was always forgetting himself, and sang without knowing it.

His jailer reported him to the governor.

"Bunder-Runder," he said, "is always making more noise than he has any right to. From the way he sings, Sahib, you would think he was at a festival or at a wedding or at a rich uncle's funeral. I can't cure him of it, I've left him without light and I've left him without food, and still he goes on. It's not reasonable unless he is planning some way by which to escape."

The governor seemed to think as the jailer did, he caused Bunder-Runder to be brought before him, and examined him up and down, and could discover nothing. He caused his cell to be searched, and, to make doubly sure, had him transferred to another. But despite it all, the singing of Bunder-Runder went on, and some days it was as though he were burying not one rich uncle, but ten.

In a way that is what Bunder-Runder was doing He was burying one after another all the injuries that life had done him in the days when he was at liberty, and from the grave of every injury and injustice that he buried a little kindness sprang up to life and came to keep him company. Bunder-Runder's cell became full of these little kindnesses. They sat round him and under him, they leaned over him, they laughed and jested, pushing him this way and that Every morning when he woke they pushed him into the open He left his cell behind, passing through the thin walls, and followed their leading away over the shining plains and into the lives of people he knew and of others he had never known, and of others still who had not yet been born

He began to make a poem about them all in his own head, he must not write it down That occupied him, day by day it grew larger, filling his mind He sat very silent, his jailer no more complained of him

"His spirit is properly broken," said he to the governor, "he has become good" And the governor gave him a good-conduct mark

In the course of three years Bunder-Runder earned a lot of good-conduct marks, but he did not know of it The poem was nearly finished, that was all he cared about

It was a very beautiful poem, all about children—children of tender years, children in the spring of youth, in the full strength of manhood, and in the decline of age, for he had found out that secret which keeps alive the common child in us all When the governor of the prison came and spoke to him, Bunder-Runder heard him—under his beard and inside that fat, red face of his—babbling like a child, and putting it into his poem as soon as the governor's back was turned, he swung his head this way and that and laughed for the babbling of the governor's voice was as sweet to him as the sound of a brook that runs down to empty itself into the great river and into the sea It wanted only that the poem was done

Out in the world everything had begun to spring, flowers and the young green fields of rice and music in the living heart, and from every tree, a little shaken by the wind, came fragrance to catch the breath and a twinkle of leaves to make delight to the eye Bunder-Runder was there in the midst of it all, oh, yes, he was there His poem was finished now, and he stood on the ridge of hills looking out over the villages of the plains, and in every village, he knew, festival was going on, and people were rejoicing, perhaps not knowing why But he knew that it was because the eternal child in Nature was looking once more into men's eyes as unspoiled as ever, as clear and shining and pure as

in the days of old For hundreds and thousands of years wrong and cruelty had been trying to possess and cover the earth , but it had failed, and Nature was as much a child as she had ever been

Bunder-Runder, with his finished poem in his heart, followed his thoughts from village to village , and everywhere he went he found a home waiting for him He had not to speak the meaning of his poem was in his face , people came and looked at him, then ran to tell others, and word of him went before Everywhere he went that day whole villages came out to meet him The children and the young women threw garlands upon him as he passed He became a wagon of flowers , a wonderful scent filled his brain , he ceased to see the faces that thronged about him or hear the voices of the people Forward and forward he moved till he came to a deep sleep

In the evening, just before sunset, the jailer opened the door of Bunder-Runder's cell He looked in , then, without looking again, he ran fast, fast to fetch the governor He was almost too frightened to speak , but what he did say was enough to make the governor understand that the prison rules were being broken So the governor put on an angry countenance and came with him to the door of Bunder-Runder's cell

Inside sat Bunder-Runder very still, his legs crossed, his hands resting upon his feet , and all about him hung garlands of flower . breathing incense very strange The cell was full of their fragran-

" Number 109," said the governor, " where did you get those flowers ? "

Bunder-Runder did not answer

" Go and give him a shake," said the governor " He is asleep "

" Sahib, I dare not," replied the jailer

So the governor went and did it himself At the governor's touch Bunder-Runder bowed softly forward, his face to the ground , and suddenly all the garlands of flowers that were upon him faded away, leaving only their fragrance behind

The governor turned and ran out of the cell, for he too was afraid Bunder-Runder was just as harmless now that he was dead as ever he had been in life, and yet the governor was afraid That is often the way People are afraid of things they do not understand

The cell where Bunder-Runder lived those three years making his poem has been many times washed and disinfected , but there is still something the matter with it, and it is almost useless, for when a prisoner is put into it he sings.

**E W HORNUNG**

**B. 1866**

## **THE SALOON PASSENGER**

**A**S the cable was hauled in, and the usual cheering passed between tug and ship, Skrimshire unclenched his teeth and gave tongue with a gusto as cynical as it was sincere. It had just come home to him that this was the last link with land, and he beheld it broken with ineffable relief. Tuskar Rock was already a little thing astern, the Australian coast lay the width of the world away, the captain did not expect even to sight any other, and had assured Skrimshire that the average passage was not less than ninety days. So, whatever was to happen in the end, he had three months more of life, and of such liberty as a sailing-ship affords.

He descended to his cabin, locked himself in, and lay down to read what the newspapers had to say about the murder. It seemed strange to Skrimshire that this was the first opportunity he had had of reading up his own crime, but the peculiar circumstances of his departure had forbidden him many a last pleasure ashore, and he was only too glad to have the papers to read now and a state-room to himself in which to read them. There was a heavy sea running, and Skrimshire was no sailor. But he would not have been without the motion, or even its effects upon himself. Both were an incessant reminder that his cabin was not a prison cell, and could not turn into one for three months at all events. Besides, he was not the man to surrender to a malady which is largely nervous. So he lay occupied in his berth, medium-sized, dark-skinned, neither young nor middle-aged, only respectably dressed, and with salient jaw unshaven since the thing of which he read without a flicker of the heavy eyelids or a tremor of the hairy hands.

He had five papers of that morning's date, the crime was worthily reported in them all, one or two had leaders on its peculiar atrocity. Skrimshire sighed when he came to the end, it was hard that he could see no more papers for three months. The egotism of the criminal was excited within him. It was lucky he was no longer on land, he would have run any risk for the evening papers. His



very anonymity as author of the tragedy—the thing to which he owed his temporary security—was a certain irritation to him. He was not ashamed of what he had done. It read wonderfully, and was already admitted to have shown that diabolical cleverness and audacity for which Skrimshire alone deserved the credit, yet it looked as though he would never get it. Thus far, at least, it was plain that there was not a shred of evidence against him, or against any person upon earth. He sighed again, smiled at himself for sighing, and, closing his eyes for the first time since the murder, slept like a baby for several hours.

Skrimshire was the only passenger in the saloon, of which he presently became the life and soul. At the first meal he yielded to the temptation of a casual allusion to the murder on the Caledonian Railway, but though they had heard of it, neither captain nor officers showed much interest in the subject, which Skrimshire dropped with a show of equal indifference. And this was his last weakness of the kind. He threw his newspapers overboard, and conquered the morbid vanity they had inspired by a superb effort of the will. Remorse he had none, and for three months certain he was absolutely safe. So he determined to enjoy himself meanwhile, and, in doing so, being a dominant personality, he managed to diffuse considerable enjoyment throughout the ship.

This man was not a gentleman in either the widest or the narrowest sense of that invidious term. He wore cheap jewellery, cheap tweed as yellow as his boots, paper collars, and shirts of a brilliant blue. He spoke with a Cockney intonation which, in a Scottish vessel, grated more or less upon every ear. But he had funds of information and of anecdote as inexhaustible as his energy and as entertaining as his rough good-humour. He took a lively interest in every incident of the voyage, and was as ready to go aloft in a gale of wind as to make up a rubber in any part of the ship. Within a month he was equally popular in the fore-castle, the steerage, and the captain's cabin. Then one morning Skrimshire awoke with a sense that something unusual was happening, followed by an instantaneous premonition of impending peril to himself.

There were too many boots and voices over his head, the ship was bowling sedately before the north-east trades, and otherwise as still as a ship could be. Skrimshire sat up and looked through his port-hole. A liner was passing them, also outward-bound, and some

three or four miles to port There was nothing alarming in that. Yet Skrimshire went straight on deck in his pyjamas, and, on the top rung of the poop-ladder, paused an instant, his now bearded jaw more salient than it had been for weeks

Four little flags fluttered one above the other from the peak halliards, and at the weather-rail stood the captain, a powerful figure of a man, with his long legs planted well apart, and a marine binocular glued to his eyes Near him was the second mate, a simple young fellow, who greeted Skrimshire with a nod

"What's up, M'Kendrick? What is she?"

"A Castle liner, one o' Donal' Currie's Cape boats."

"Why did you signal her?" whispered Skrimshire

"'Twas she signalled us"

"Do you know what it's all about?"

"No, but the captain does"

The captain turned round as they were speaking, and Skrimshire read his secret at a glance It was his own, discovered since his flight and flashed across the sea by the liner's pennons Meanwhile the captain was looking him up and down, his hitherto friendly face convulsed with hatred and horror, and Skrimshire realised the instant necessity of appearing absolutely unsuspecting of suspicion

"Mornin', captain," said he, with all the cheerful familiarity which already existed between them, "and what's all this bloomin' signallin' about?"

"Want to know?" thundered the captain, now looking him through and through

"You bet I do"

And Skrimshire held his breath upon an insinuating grin, parrying plain abhorrence with seeming unconcern, until the other merely stared

"Then you can mind your own business," roared the captain at last, "and get off my poop—and speak to my officer of the watch again at your peril!"

"Well—I'm—hanged!" drawled Skrimshire, and turned on his heel with the raised eyebrows of bewildered innocence, but the drops stood thick upon his forehead when he saw himself next minute in his stateroom mirror

So he was found out, and the captain had been informed he had a murderer aboard, and detectives would meet the ship in Hobson's Bay, and the murderer would be escorted back through the Suez

Canal and duly hanged after nothing better than a run round the world for his money! The thing had happened before · it had been the fate of the first train murderer, but he had taken the wrong hat in his panic. What on earth had Skrimshire left behind him that was going to hang him after all?

He could not think, nor was that the thing to think about. The immediate necessity he had seen at once, with extraordinary quickness of perception, and he had already acted upon it with a nerve more extraordinary still. He must preserve such a front as should betray not the shadow of a dream that he could by any possibility be suspected by any soul on board, absolute ease must be his watchword, absolute security his pose, then they might like to save themselves the inconvenience of keeping him in irons, knowing that detectives would be waiting to do all the dirty work at the other end. And in two months' thinking a man should hit upon something, or he deserved to swing.

The opening day was not the worst. The captain's rudeness was enough to account for a change in any man's manner, and Skrimshire did both well and naturally to sulk for the remainder of that day. His unusual silence gave him unusual opportunities for secret observation, and he was thankful indeed that for the time being there was no necessity to live up to his popular reputation. The scene of the morning was all over the ship, yet, so far as the saloon passengers could see, the captain had not told anybody as yet. The chief mate invited him into his cabin for a smoke, spread the usual newspaper for a spittoon, and spun the inevitable yarns, but then the chief was a hard-bitten old dog with nerves of iron and a face of brass, he might know everything, or nothing at all, it was for Skrimshire to adapt his manner to the first hypothesis, and to impress the mate with the exuberance of his spirits and the utter lightness of his heart. Later in the morning he had some conversation with the second officer. It was but a word, and yet it confirmed the culprit in his conviction about the signals.

"What have I done," he asked M'Kendrick, "to make the old man jump down my throat like that?"

"It wasna you," replied the second, "it was the signals. But ye might have known not to bother him wi' questions just then."

"But what the deuce were the signals about?"

"That's more than I ken, Bennett."

This was Skrimshire's *alias* on board.

" Can't you find out ? "

" Mebbe I might—after a bit "

" Why not now ? "

" The old man's got the book in his cabin—the deectionary-book about the signalling, ye ken It's my place to keep yon, but the old man's carried it off, and there's no' another in the ship "

" Aha ! "

" Ou, ay, it was somethin' for hisselt', nae doot , but none of us kens what ; an' noo we never wull, for he's as close as tar, is the old man "

The " old man " was in point of fact no older than Skrimshire, but he had worked his way aft from ship's boy, and a cruel boyhood followed by an early command had aged and hardened him A fine seaman, and a firm, though fiery, commander, Captain Neilson had also as kind a heart as one could wish to win, and a mind as simple as it was fair It was on these qualities that Skrimshire determined to play, as he sulked in his deck-chair on the poop of the four-masted barque *Lochwinnoch*, while the captain thumped up and down in his rubber soles, his face black with thought, and a baleful eye upon the picture of offended oblivion behind the novel in the chair

It was an interesting contest that was beginning between this pair, both of whom were strong, determined, wilful men , but one was as cunning as the other was kind, and he not only read his better like a book, but supplied in his turn a very legible and entirely plausible reading of himself He never dreamt of impressing the captain as an innocent man , that would entail an alteration of pose inconsistent with the attitude of one who entertained no tittle of suspicion that the morning's signalling had been about himself On the contrary, what he had really been, and what he must now doubly appear, was the guilty man who had very little fear of ever being detected, and not the fleeting shadow of a notion that such detection had already taken place.

This was the obvious and the only rôle , he had played it instinctively thus far, and need only go on as he had begun The reward was at best precarious It depended entirely upon the character and temperament of Captain Neilson Skrimshire credited him with sufficient strength and sufficient humanity to do nothing and to tell nobody until the Australian detectives came aboard. But that remained to be proved. Neilson might leave him a free man all the

voyage, and yet put him in irons before the very end ; it would be kinder to do so at once. However, he should not do so at all if Skrimshire could help it, and he was not long in letting fall an oblique and delicate, though an excessively audacious hint upon the responsibility of such a course in his own particular case.

It was at the mid-day meal, while the smoke of the accursed liner was still a dirty cloud on the horizon. Neilson remained morose and silent, while the offended passenger would not give him word or look, but, on the other hand, talked more than ever, and with invidious gaiety, to the first and second officers. The captain glowered at his plate, searching his transparent soul for the ideal course and catching very little of the conversation, how the topic of suicide arose he never knew.

"An' I call it th' act of a coward," young M'Kendrick was declaring, "you can say what you like, but a man's no' a man that does the like o' that."

"Well, you think about it next time you're havin' a shave, old man," retorted Skrimshire pleasantly. "Think o' buryin' a razor in your neck, and the pain, and the blood comin' over your fingers like as though you'd turned on the hot tap, and if you think long enough you'll know whether it's the act of a coward or whether it ain't."

"I'd blow my blessed head in," said the chief officer. "It'd be quicker."

"Oh, if it comes to that," said Skrimshire, "I'd take prussic acid for choice. It would take a lot to make me, I admit, but I'd do it like a shot to escape a worse death. I've often thought, for instance, what a rum thing it is, in these days, that a man of any sense or education whatever should let himself live to be hung!"

The captain looked up at this, so far he had merely listened. But Skrimshire was addressing himself to the chief mate at the other end of the table, neither look nor tone was intended to include Captain Neilson, the one being averted, and the other lowered, to a nice degree of insolent disregard. On the other hand, the manner of this theoretical suicide was all audacity and nonchalance, combined with a certain underlying sincerity which gave it a peculiar value in the mind of one listener. In a word, it was the manner of a man so convinced of his own security as to afford the luxury of telling the truth about himself in jest.

"They don't give you a chance," said the mate. "They watch

you night and day You'd be a good man, once you'd got to dance the hornpipe on nothing, if you went out any other way "

" Nevertheless, I'd do it," said Skrimshire, with cheery confidence. " I'd back myself to do it, and before their eyes "

" Poison ? "

" Yes "

" In a ring, eh ? "

" A ring ! Do you suppose they'd leave you your rings ? No ; it might be in a hollow tooth, and it might not All I say is that I'd back myself to cheat the hangman " Skrimshire said it through his black moustache " And I'd do it, too," he added, after a pause

Then, at last, the captain put in his word " You would do well," said he quietly " I once saw a man swing, and I never want to see another Ugh ! "

His eyes met Skrimshire's, which fell deliberately , and the talkative tongue wagged no more that meal

Thereafter Neilson was civility itself, only observant civility He had made up his mind in the knotty matter of the suspected murderer, and the latter read his determination as he had read the difficulty which it solved, if only for the present

" So he means to let me go loose, only keeping an eye on me , so far, so good But how long—how long ? If I thought he was going to put me in irons as soon as he sights the land——"

He looked over the side, and a slight shudder shook even his frame It was very blue water now, the depth unfathomable A shark had been seen that morning And, sharks or no sharks, Skrimshire could not swim But he had two months of steady thought before him

Meanwhile the captain showed some cunning in his turn He evidently wished to convince himself that Skrimshire had not suspected the signalling One day, at any rate, the passenger was invited into the captain's cabin, in quite the old friendly fashion, for a pipe and a chat , in the middle of which Neilson left him for five minutes to speak to the officer of the watch As the north-east trades blew as strong and true as ever, as the yards had not been touched for days, and as no sail was in sight, Skrimshire scented a trap, and presently beheld one set under his nose in the shape of the signalling book. Skrimshire smiled The captain found him buried in a magazine, and his little trap untouched And the obvious deduction was also final to the sailor's mind.

Six weeks produced no change in the outward situation, but brought the voyage so near its end that every soul but one waxed merry with the thought of shore—and that one seemed the merriest of them all. They had come from the longitude of the Cape to that of Kangaroo Island in twenty days, and in all probability would enter Port Philip Heads in two days more. In one week the *Lochwinnoch* had logged close upon two thousand miles, boy and man, her commander had never made such an "easting" in his seagoing life. His pleasure and his pride were alike enormous, and Skrimshire conceived that his general good-will towards men could scarcely have suffered by the experience. He determined, at all events, to feel his way to such compassion as an honest man could be expected to extend towards an unhung murderer, and he felt it with that mixture of cautious craft and sheer impudence which made him the formidable criminal he was.

It was the night that might prove the last of the voyage, and the last night of freedom for the unhappy Skrimshire. Unhappy he undoubtedly was, for the strain of continuing as he had begun, "the life and soul of the ship," had told upon even his nerves in the end, though to the end it had been splendidly borne. To-night, however, as he paced the poop by the captain's side, he exhibited for the first time a despondency which exactly fitted in with Neilson's conception of his case.

"I shall never forget this voyage," said Skrimshire, sighing. "You may not believe me, captain, but I'm sorry it's over. I am, indeed, no doubt I'm the only man in the ship who is."

"And why are you?" asked Neilson, eyeing his passenger for once with the curiosity which had so long consumed him, as also with the sympathy which had grown upon him, despite, or on account of, those sinister signals from the Castle liner.

Skrimshire shrugged.

"Oh, that's a long story. I've had a rum life of it, and not what you would call the life of a saint. This voyage will stand out as one of its happiest chapters, that's all, and it may be one of the last."

"Why do you say that?"

"Oh, one can never tell."

"But what did you think of doing out there?"

"God knows!"

Neilson was miserable. There was a ring in the hoarse voice that

went straight to his heart. He longed to tell this man what was in store for him—what he himself knew—but he conquered the longing as he had conquered it before. Time enough when the detectives came on board, dirty work and all responsibility would very well keep for them.

So the good captain thought to himself, as the pair took turns in silence, so the dominant brain at his side willed and intended that he should think.

"Whatever you hear of me," resumed Skrimshire at last, "and however great a beast I may some day turn out, remember that I wasn't one aboard your ship. Will you, captain? Remember the best of me and I'll be grateful, wherever I am, and whatever happens."

"I will," said Neilson, hoarse in his turn, and he grasped the guilty hand. Skrimshire had some ado to keep from smiling, but there was another point upon which he required an assurance, and he sought it after a decent pause.

"So you expect to pass the Otway some time to-morrow?"

"By dinner-time, if we're lucky."

"And there you signal?"

"Yes, they should hear of us in Melbourne early to-morrow afternoon."

"And what about the pilot?"

"Oh, he'll come aboard later—certainly not before evening. It's easy as mid-ocean till you come to the Heads, and we can't be there before nightfall, even if the wind holds fair."

"Well, let's hope it may. So long, captain, and a thousand thanks for all your kindness. Dark night, by the way!"

"Yes, let's hope to-morrow won't be like it."

But the next night was darker still, there was neither moon nor star, and Skrimshire was thankful to have had speech with the captain while he could, for now he would speak to nobody, and to-morrow—

There was no to-morrow in Skrimshire's mind, there was only to-night. There was the hour he had been living for these six long weeks. There was the plan that had come to him with the south-east trades, and rolled in his mind through the Southern Ocean, only to reach perfection within the last few hours. But it was perfect now. And all beyond lay dark.

"Isn't that their boat, sir?"

It was the chief steward who wanted to know, he was dallying



on the poop in the excitement of the occasion. The captain stood farther aft, an anxious face, a red cigar-end, and a blue Tam-o'-Shanter were all of him that showed in the intense darkness. The main-yard had just been backed, and the chief officer was now on the quarter-deck, seeing the rope ladder over the side. It was through his glasses that Skrimshire was watching the pilot's cutter, or rather her lights, and as well as he could, by their meagre rays, the little boat that now bobbed against the cutter's side.

"It is the boat, ain't it, sir?" persisted the steward.

"Yes, I think so," said Skrimshire. "How many men come with the pilot as a rule?"

"Only himself and a chap to row him."

"Ah! You might give these to the chief officer, steward. I'm going to my cabin for a minute. Don't forget to thank the mate for lending me his glasses, they've been exceedingly useful to me."

And Skrimshire disappeared down the ladder, his tone had been strange, but the steward only remembered this afterwards, at the time he was too excited himself, and too glad of a glass to level at the boat, to note any such nicety as a mere tone.

"Four of them, by Jingo!" mused the steward. "I wonder what that's for?"

But he did not wonder long. In a very few minutes the four were on board, and ascending the same ladder by which Skrimshire had gone below, the pilot at their head. Neilson received them at the break of the poop.

"I congratulate you, captain," was the pilot's greeting; "we didn't expect you before next week. Now, first allow me," and he lowered his voice, "to introduce Inspector Robins, of the Melbourne police, this gentleman is an officer he has brought with him, and my man has come aboard for a message for the shore. Mr Robins would like a word with you before we let him go. There is no hurry, for I'm very much afraid I can't take you in till daylight."

Neilson took the inspector to the weather-rail.

"I know what's coming," he said. "*The Garth Castle* signalled——"

"I know, I know. Have you got him? Have you got him?" rapped out Robins.

"Safe and sound," whispered the captain; "and thinks himself as right as the bank, poor devil!"

"Then you didn't put him in irons?"

"No, I thought it better not to. He'd have committed suicide I spotted that, sounded him without his knowing," said the crafty captain. "I happened to read the signals myself, and I never let on to a soul in the ship."

The good fellow looked delighted with himself behind his red cigar, but the acute face of the detective scarcely reflected his satisfaction.

"Well, that's all right if he's all right," said Robins. "If you don't mind, captain, I'd like to be introduced to him. One or both of us will spend the night with him, by your leave."

"As you like," said Neilson; "but I can't help feeling sorry for him. He's no more idea of this than the man in the moon. That you, steward? Where's Mr Bennett? He was here a minute ago."

"Yes, sir, only just gone below, sir."

"Well, go and ask him to come up and drink with the pilot. I'll introduce him to the pilot, and you can do what you like," continued the captain, only wishing he could shirk a detestable duty altogether. "But I gave you fair warning, this is a desperate man or I'm much mistaken in him."

"Desperate!" chuckled the inspector, "don't we know it? It seems to have been as bad a murder as you've had in the old country for a long time. In a train. All planned. Victim in one carriage, our friend in the next, got along footboard in tunnel, shot him dead through window, and got back. Case of revenge, and other fellow no beauty, but this one's got to swing. On his way to join your ship, too, passage booked beforehand. The most cold-blooded plant——"

It was the chief steward, breathless and panic-stricken.

"His door's locked——"

"He always does lock it," exclaimed the captain, as Robins darted to the ladder with an oath.

"But now he won't answer!" cried the steward.

And even with his words the answer came, in the terrific report of a revolver fired in a confined space. Next instant the inspector had hurled himself into the little saloon, the others at his heels, and half the ship's company at theirs. There was no need to point out the culprit's cabin. White smoke was streaming through the ventilated panels, all stood watching it, but for a time none spoke. Then Robins turned upon the captain.

"We have you to thank for this, Captain Neilson," said he. "It is you who will have to answer for it."

Neilson turned white, but it was white heat with him.

"And so I will," he thundered, "but not to you! I don't answer to any confounded Colonial policeman, and I don't take cheek from one either. By Heaven, sir, I'm master of this ship, and for two pins I'll have you over the side again, detective or no detective. Do your business and break in that door, and you leave me to mind mine at the proper time and in the proper place."

He was furious with the fury of a masterful mariner, whose word is law aboard his own vessel, and yet beneath this virile passion there lurked a certain secret satisfaction in the thought that the companion of so many weeks was at all events not to hang. But the tragedy which had occurred was a greater unpleasantness for himself, indeed, it might well lead to something more, and Neilson stood in the grip of grim considerations in his own doorway, while Robins sent for the carpenter without addressing another syllable to the captain.

The saloon had been invaded by steerage passengers, and even by members of the crew, but discipline was for once a secondary matter in the eyes of Captain Neilson, and their fire was all for the insolent intruder who had dared to blame him aboard his own ship. The carpenter had to fight his way through a small, but exceedingly dense, crowd, beginning on the quarter-deck outside, and at its thickest in the narrow passage terminating in the saloon. On his arrival, however, the lock was soon forced, and the door swung inwards in a sudden silence, broken as suddenly by the detective's voice.

"Empty, by Heaven!" he shrieked. "Hunt him—he's given us the slip!"

And the saloon emptied only less rapidly than it had filled, till Neilson had it to himself, he stepped over to the passenger's cabin, half expecting to find him hiding in some corner after all. There he was wrong, nor did he at once grasp the full significance of what he did find.

A revolver was dangling from a peg on one side of the cabin—dangling by a yard of twine secured to the trigger. A few more inches of the twine, tied to the butt, had been severed by burning, as had another yard dangling from another peg at the opposite side of the cabin. An inch of candle lay upon the floor. The twine had been passed through it, there was its mark in the wax. The whole had

been strung across the cabin and the candle lighted before Skrimshire left, the revolver, hung by the trigger as a man is hanged by the neck, had been given a three-foot drop, and gone off duly as the flame burnt down to the string. Such was the plan which an ingenious (if perverted) mind had taken several weeks to perfect.

Neilson rushed on deck, to find all hands at the rail, and a fresh sensation in the air. The pilot met him on the poop.

"My boat's gone!" he cried. "And the night like pitch!"

Neilson stood thunderstruck.

"Did you leave a man aboard?"

"No, he came up for a telegram for the police in town."

"Then you can't blame me there."

And the captain leapt upon the rail at the break of the poop.

"Silence!" he roared. "Silence—every man of you! If we can't see we must listen. . . that's it. . . not a whisper. . . now."

At first there was nothing to be heard but the quick-drawn breath from half a hundred throats, then, out of the impenetrable darkness, came the thud, thud, thud of an oar in a rowlock, already some distance away, but in which direction it was impossible to tell on such a night.

## THE STOLEN BACILLUS

"THIS again," said the Bacteriologist, slipping a glass slide under the microscope, "is a preparation of the celebrated Bacillus of cholera—the cholera germ "

The pale-faced man peered down the microscope. He was evidently not accustomed to that kind of thing, and held a limp white hand over his disengaged eye. "I see very little," he said.

"Touch this screw," said the Bacteriologist, "perhaps the microscope is out of focus for you. Eyes vary so much. Just the fraction of a turn this way or that."

"Ah! now I see," said the visitor. "Not so very much to see after all. Little streaks and shreds of pink. And yet those little particles, those mere atomies, might multiply and devastate a city! Wonderful!"

He stood up, and releasing the glass slip from the microscope, held it in his hand towards the window. "Scarcely visible," he said, scrutinising the preparation. He hesitated. "Are these—alive? Are they dangerous now?"

"Those have been stained and killed," said the Bacteriologist. "I wish, for my own part, we could kill and stain every one of them in the universe."

"I suppose," the pale man said with a slight smile, "that you scarcely care to have such things about you in the living—in the active state?"

"On the contrary, we are obliged to," said the Bacteriologist. "Here, for instance—" He walked across the room and took up one of several sealed tubes. "Here is the living thing. This is a cultivation of the actual living disease bacteria." He hesitated. "Bottled cholera, so to speak."

A slight gleam of satisfaction appeared momentarily in the face of the pale man. "It's a deadly thing to have in your possession," he said, devouring the little tube with his eyes. The Bacteriologist watched the morbid pleasure in his visitor's expression. This man, who had visited him that afternoon with a note of introduction from an old friend, interested him from the very contrast of their dispositions.

The lank black hair and deep grey eyes, the haggard expression and nervous manner, the fitful yet keen interest of his visitor were a novel change from the phlegmatic deliberations of the ordinary scientific worker with whom the Bacteriologist chiefly associated. It was perhaps natural, with a hearer evidently so impressionable to the lethal nature of his topic, to take the most effective aspect of the matter.

He held the tube in his hand thoughtfully. "Yes, here is the pestilence imprisoned. Only break such a little tube as this into a supply of drinking-water, say to these minute particles of life that one must needs stain and examine with the highest powers of the microscope even to see, and that one can neither smell nor taste—say to them, 'Go forth, increase and multiply, and replenish the cisterns,' and death—mysterious, untraceable death, death swift and terrible, death full of pain and indignity—would be released upon this city, and go hither and thither seeking his victims. Here he would take the husband from the wife, here the child from its mother, here the statesman from his duty, and here the toiler from his trouble. He would follow the water-mains, creeping along streets, picking out and punishing a house here and a house there where they did not boil their drinking-water, creeping into the wells of the mineral-water makers, getting washed into salad, and lying dormant in ices. He would wait ready to be drunk in the horse-troughs, and by unwary children in the public fountains. He would soak into the soil, to reappear in springs and wells at a thousand unexpected places. Once start him at the water-supply, and before we could ring him in, and catch him again, he would have decimated the metropolis."

He stopped abruptly. He had been told rhetoric was his weakness.

"But he is quite safe here, you know—quite safe."

The pale-faced man nodded. His eyes shone. He cleared his throat. "These Anarchist—rascals," said he, "are fools, blind fools—to use bombs when this kind of thing is attainable. I think——"

A gentle rap, a mere light touch of the finger-nails was heard at the door. The Bacteriologist opened it. "Just a minute, dear," whispered his wife.

When he re-entered the laboratory his visitor was looking at his watch. "I had no idea I had wasted an hour of your time," he said. "Twelve minutes to four. I ought to have left here by half-past three. But your things were really too interesting. No, positively, I cannot stop a moment longer. I have an engagement at four."

He passed out of the room reiterating his thanks, and the Bacteriologist accompanied him to the door, and then returned thoughtfully along the passage to his laboratory. He was musing on the ethnology of his visitor. Certainly the man was not a Teutonic type nor a common Latin one. "A morbid product, anyhow, I am afraid," said the Bacteriologist to himself. "How he gloated on those cultivations of disease germs!" A disturbing thought struck him. He turned to the bench by the vapour-bath, and then very quickly to his writing-table. Then he felt hastily in his pockets, and then rushed to the door. "I may have put it down on the hall table," he said.

"Minnie!" he shouted hoarsely in the hall.

"Yes, dear," came a remote voice.

"Had I anything in my hand when I spoke to you, dear, just now?"

Pause.

"Nothing, dear, because I remember——"

"Blue ruin!" cried the Bacteriologist, and incontinently ran to the front door and down the steps of his house to the street.

Minnie, hearing the door slam violently, ran in alarm to the window. Down the street a slender man was getting into a cab. The Bacteriologist, hatless, and in his carpet slippers, was running and gesticulating wildly towards this group. One slipper came off, but he did not wait for it. "He has gone *mad*!" said Minnie, "it's that horrid science of his", and, opening the window, would have called after him. The slender man, suddenly glancing round, seemed struck with the same idea of mental disorder. He pointed hastily to the Bacteriologist, said something to the cabman, the apron of the cab slammed, the whip swished, the horse's feet clattered, and in a moment cab, and Bacteriologist hotly in pursuit, had receded up the vista of the roadway and disappeared round the corner.

Minnie remained straining out of the window for a minute. Then she drew her head back into the room again. She was dumbfounded. "Of course he is eccentric," she meditated. "But running about London—in the height of the season, too—in his socks!" A happy thought struck her. She hastily put her bonnet on, seized his shoes, went into the hall, took down his hat and light overcoat from the pegs, emerged upon the doorstep, and hailed a cab that opportunely crawled by. "Drive me up the road and round Havelock Crescent, and see if we can find a gentleman running about in a velveteen coat and no hat."

"Velveteen coat, ma'am, and no 'at. Very good, ma'am." And

the cabman whipped up at once in the most matter-of-fact way, as if he drove to this address every day in his life

Some few minutes later the little group of cabmen and loafers that collects round the cabmen's shelter at Haverstock Hill were startled by the passing of a cab with a ginger-coloured screw of a horse, driven furiously

They were silent as it went by, and then as it receded—"That's 'Arry 'Icks Wot's *he* got?" said the stout gentleman known as Old Tootles

"He's a-using his whip, he is, *to* rights," said the ostler boy

"Hullo!" said poor old Tommy Byles. "here's another bloomin' loonatic Blowed if there ain't"

"It's old George," said old Tootles, "and he's drivin' a loonatic, as you say Aint he a-clawin' out of the keb? Wonder if he's after 'Arry 'Icks?"

The group round the cabmen's shelter became animated Chorus "Go it, George!" "It's a race" "You'll ketch 'em!" "Whip up!"

"She's a goer, she is!" said the ostler boy

"Strike me giddy!" cried old Tootles "Here! *I'm* a-goin' to begin in a minute Here's another comin' If all the kebs in Hampstead ain't gone mad this morning!"

"It's a fieldmale this time," said the ostler boy

"She's a-followin' *him*," said old Tootles "Usually the other way about"

"What's she got in her 'and?"

"Looks like a 'igh 'at"

"What a bloomin' lark it is! Three to one on old George," said the ostler boy "Nexst!"

Minnie went by in a perfect roar of applause She did not like it, but she felt that she was doing her duty, and whirled on down Haverstock Hill and Camden Town High Street with her eyes ever intent on the animated back view of old George, who was driving her vagrant husband so incomprehensibly away from her.

The man in the foremost cab sat crouched in the corner, his arms tightly folded, and the little tube that contained such vast possibilities of destruction gripped in his hand His mood was a singular mixture of fear and exultation Chiefly he was afraid of being caught before he could accomplish his purpose, but behind this was a vaguer but larger fear of the awfulness of his crime. But his exultation far



exceeded his fear. No Anarchist before him had ever approached this conception of his. Ravachol, Vaillant, all those distinguished persons whose fame he had envied dwindled into insignificance beside him. He had only to make sure of the water supply, and break the little tube into a reservoir. How brilliantly he had planned it, forged the letter of introduction and got into the laboratory, and how brilliantly he had seized his opportunity! The world should hear of him at last. All those people who had sneered at him, neglected him, preferred other people to him, found his company undesirable, should consider him at last. Death, death, death! They had always treated him as a man of no importance. All the world had been in a conspiracy to keep him under. He would teach them yet what it is to isolate a man. What was this familiar street? Great Saint Andrew Street, of course! How fared the chase? He craned out of the cab. The Bacteriologist was scarcely fifty yards behind. That was bad. He would be caught and stopped yet. He felt in his pocket for money, and found half-a-sovereign. This he thrust up through the trap in the top of the cab into the man's face. "More," he shouted, "if only we get away."

The money was snatched out of his hand. "Right you are," said the cabman, and the trap slammed, and the lash lay along the glistening side of the horse. The cab swayed, and the Anarchist, half-standing under the trap, put the hand containing the little glass tube upon the apron to preserve his balance. He felt the brittle thing crack, and the broken half of it rang upon the floor of the cab. He fell back into the seat with a curse, and stared dismally at the two or three drops of moisture on the apron.

He shuddered.

"Well! I suppose I shall be the first *Plow*! Anyhow, I shall be a Martyr. That's something. But it is a filthy death, nevertheless. I wonder if it hurts as much as they say."

Presently a thought occurred to him—he groped between his feet. A little drop was still in the broken end of the tube, and he drank that to make sure. It was better to make sure. At any rate, he would not fail.

Then it dawned upon him that there was no further need to escape the Bacteriologist. In Wellington Street he told the cabman to stop, and got out. He slipped on the step, and his head felt queer. It was rapid stuff this cholera poison. He waved his cabman out of existence, so to speak, and stood on the pavement with his arms folded upon his breast awaiting the arrival of the Bacteriologist. There was something

tragic in his pose The sense of imminent death gave him a certain dignity He greeted his pursuer with a defiant laugh

"Vive l'Anarchie! You are too late, my friend I have drunk it The cholera is abroad!"

The Bacteriologist from his cab beamed curiously at him through his spectacles "You have drunk it! An Anarchist! I see now" He was about to say something more, and then checked himself A smile hung in the corner of his mouth He opened the apron of his cab as if to descend, at which the Anarchist waved him a dramatic farewell and strode off towards Waterloo Bridge, carefully jostling his infected body against as many people as possible The Bacteriologist was so preoccupied with the vision of him that he scarcely manifested the slightest surprise at the appearance of Minnie upon the pavement with his hat and shoes and overcoat "Very good of you to bring my things," he said, and remained lost in contemplation of the receding figure of the Anarchist

"You had better get in," he said, still staring Minnie felt absolutely convinced now that he was mad, and directed the cabman home on her own responsibility "Put on my shoes? Certainly dear," said he, as the cab began to turn, and hid the strutting black figure, now small in the distance, from his eyes Then suddenly something grotesque struck him, and he laughed Then he remarked, "It is really very serious, though"

"You see, that man came to my house to see me, and he is an Anarchist No—don't faint, or I cannot possibly tell you the rest And I wanted to astonish him, not knowing he was an Anarchist, and took up a cultivation of that new species of Bacterium I was telling you of, that infest, and I think cause, the blue patches upon various monkeys, and like a fool, I said it was Asiatic cholera And he ran away with it to poison the water of London, and he certainly might have made things look blue for this civilised city And now he has swallowed it Of course, I cannot say what will happen, but you know it turned that kitten blue, and the three puppies—in patches, and the sparrow—bright blue But the bother is, I shall have all the trouble and expense of preparing some more

"Put on my coat on this hot day! Why? Because we might meet Mrs Jabber My dear, Mrs Jabber is not a draught. But why should I wear a coat on a hot day because of Mrs.—? Oh! *very* well."

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# THE MAGIC SHOP

HERBERT GEORGE WELLS

I HAD seen the Magic Shop from afar several times, I had passed it once or twice, a shop window of alluring little objects, magic balls, magic hens, wonderful cones, ventriloquist dolls, the material of the basket trick, packs of cards that *looked* all right, and all that sort of thing, but never had I thought of going in until one day, almost without warning, Gip hauled me by my finger right up to the window, and so conducted himself that there was nothing for it but to take him in. I had not thought the place was there, to tell the truth—a modest-sized frontage in Regent Street, between the picture shop and the place where the chicks run about just out of patent incubators—but there it was sure enough. I had fancied it was down nearer the Circus, or round the corner in Oxford Street, or even in Holborn, always over the way and a little inaccessible it had been, with something of the mirage in its position, but here it was now quite indisputably, and the fat end of Gip's pointing finger made a noise upon the glass.

"If I was rich," said Gip, dabbing a finger at the Disappearing Egg, "I'd buy myself that. And that"—which was The Crying Baby, Very Human—"and that," which was a mystery, and called, so a neat card asserted, "Buy One and Astonish Your Friends."

"Anything," said Gip, "will disappear under one of those cones I have read about it in a book."

"And there, dad-da, is the Vanishing Halfpenny—only they've put it this way up so's we can't see how it's done."

Gip, dear boy, inherits his mother's breeding, and he did not propose to enter the shop or worry in any way, only, you know, quite unconsciously he lugged my finger doorward, and he made his interest clear.

"That," he said, and pointed to the Magic Bottle.

"If you had that?" I said, at which promising inquiry he looked up with a sudden radiance.

"I could show it to Jessie," he said, thoughtful as ever of others.

"It's less than a hundred days to your birthday, Gibbles," I said, and laid my hand on the door-handle.

Gip made no answer, but his grip tightened on my finger, and so we came into the shop

It was no common shop this, it was a magic shop, and all the prancing precedence Gip would have taken in the matter of mere toys was wanting. He left the burthen of the conversation to me

It was a little, narrow shop, not very well lit, and the door-bell pinged again with a plaintive note as we closed it behind us. For a moment or so we were alone and could glance about us. There was a tiger in *papier-maché* on the glass case that covered the low counter—a grave, kind-eyed tiger that wagged his head in a methodical manner, there were several crystal spheres, a china hand holding magic cards, a stock of magic fish-bowls in various sizes, and an immodest magic hat that shamelessly displayed its springs. On the floor were magic mirrors, one to draw you out long and thin, one to swell your head and vanish your legs, and one to make you short and fat like a draught, and while we were laughing at these the shopman, as I suppose, came in

At any rate, there he was behind the counter—a curious, sallow, dark man, with one ear larger than the other and a chin like the toe-cap of a boot

"What can we have the pleasure?" he said, spreading his long, magic fingers on the glass case, and so with a start we were aware of him

"I want," I said, "to buy my little boy a few simple tricks"

"Legerdmain?" he asked "Mechanical? Domestic?"

"Anything amusing?" said I

"Um!" said the shopman, and scratched his head for a moment as if thinking. Then, quite distinctly, he drew from his head a glass ball. "Something in this way?" he said, and held it out

The action was unexpected. I had seen the trick done at entertainments endless times before—it's part of the common stock of conjurers—but I had not expected it here. "That's good," I said, with a laugh

"Isn't it?" said the shopman

Gip stretched out his disengaged hand to take this object and found merely a blank palm

"It's in your pocket," said the shopman, and there it was!

"How much will that be?" I asked

"We make no charge for glass balls," said the shopman, politely

"We get them"—he picked one out of his elbow as he spoke—"free" He produced another from the back of his neck, and laid it beside its predecessor on the counter Gip regarded his glass ball sagely, then directed a look of inquiry at the two on the counter, and finally brought his round-eyed scrutiny to the shopman, who smiled "You may have those too," said the shopman, "and, if you *don't* mind, one from my mouth So!"

Gip counselled me mutely for a moment, and then in a profound silence put away the four balls, resumed my reassuring finger, and nerved himself for the next event

"We get all our smaller tricks in that way," the shopman remarked

I laughed in the manner of one who subscribes to a jest "Instead of going to the wholesale shop," I said "Of course, it's cheaper."

"In a way," the shopman said "Though we pay in the end But not so heavily—as people suppose Our larger tricks, and our daily provisions and all the other things we want, we get out of that hat . And you know, sir, if you'll excuse my saying it, there *isn't* a wholesale shop, not for Genuine Magic goods, sir I don't know if you noticed our inscription—The Genuine Magic Shop" He drew a business card from his cheek and handed it to me "Genuine," he said, with his finger on the word, and added, "There is absolutely no deception, sir"

He seemed to be carrying out the joke pretty thoroughly, I thought

He turned to Gip with a smile of remarkable affability "You, you know, are the Right Sort of Boy"

I was surprised at his knowing that, because, in the interests of discipline, we keep it rather a secret even at home, but Gip received it in unflinching silence, keeping a steadfast eye on him

"It's only the Right Sort of Boy gets through that doorway"

And, as if by way of illustration, there came a rattling at the door, and a squeaking little voice could be faintly heard "Nyar! I warn 'a go in there, dadda, I WARN 'a go in there Ny-a-a-ah!" and then the accents of a down-trodden parent, urging consolations and propitiations "It's locked, Edward," he said

"But it isn't," said I

"It is, sir," said the shopman, "always—for that sort of child," and as he spoke we had a glimpse of the other youngster, a little, white face, pallid from sweet-eating and over-sapid food, and distorted by evil passions, a ruthless little egotist, pawing at the enchanted pane

"It's no good, sir," said the shopman, as I moved, with my natural helpfulness, doorward, and presently the spoilt child was carried off howling

"How do you manage that?" I said, breathing a little more freely

"Magic!" said the shopman, with a careless wave of the hand, and behold! sparks of coloured fire flew out of his fingers and vanished into the shadows of the shop

"You were saying," he said, addressing himself to Gip, "before you came in, that you would like one of our 'Buy One and Astonish your Friends' boxes?"

Gip, after a gallant effort, said "Yes"

"It's in your pocket"

And leaning over the counter—he really had an extraordinarily long body—this amazing person produced the article in the customary conjurer's manner "Paper," he said, and took a sheet out of the empty hat with the springs, "string," and behold his mouth was a string-box, from which he drew an unending thread, which when he had tied his parcel he bit off—and, it seemed to me, swallowed the ball of string And then he lit a candle at the nose of one of the ventriloquist's dummies, stuck one of his fingers (which had become sealing-wax red) into the flame, and so sealed the parcel Then there was the Disappearing Egg, he remarked, and produced one from within my coat-breast and packed it, and also The Crying Baby, Very Human I handed each parcel to Gip as it was ready, and he clasped them to his chest

He said very little, but his eyes were eloquent, the clutch of his arms was eloquent He was the playground of unspeakable emotions These, you know, were *real* Magics

Then, with a start, I discovered something moving about in my hat—something soft and jumpy I whipped it off, and a ruffled pigeon—no doubt a confederate—dropped out and ran on the counter, and went, I fancy, into a cardboard box behind the *papier-maché* tiger

"Tut, tut!" said the shopman, dexterously relieving me of my head-dress, "careless bird, and—as I live—nesting!"

He shook my hat, and shook out into his extended hand two or three eggs, a large marble, a watch, about half a dozen of the inevitable glass balls, and then crumpled, crinkled paper, more and more and

more, talking all the time of the way in which people neglect to brush their hats *inside* as well as out, politely, of course, but with a certain personal application "All sorts of things accumulate, sir. . . Not *you*, of course, in particular Nearly every customer . . . Astonishing what they carry about with them " The crumpled paper rose and billowed on the counter more and more and more, until he was nearly hidden from us, until he was altogether hidden, and still his voice went on and on "We none of us know what the fair semblance of a human being may conceal, sir Are we all then no better than brushed exteriors, whited sepulchres——"

His voice stopped—exactly like when you hit a neighbour's gramophone with a well-aimed brick, the same instant silence, and the rustle of the paper stopped, and everything was still .

"Have you done with my hat?" I said, after an interval

There was no answer

I stared at Gip, and Gip stared at me, and there were our distortions in the magic mirrors, looking very rum, and grave, and quiet . . .

"I think we'll go now," I said "Will you tell me how much all this comes to?"

"I say," I said, on a rather louder note, "I want the bill, and my hat, please"

It might have been a sniff from behind the paper pile

"Let's look behind the counter, Gip," I said "He's making fun of us"

I led Gip round the head-wagging tiger, and what do you think there was behind the counter? No one at all! Only my hat on the floor, and a common conjurer's lop-eared white rabbit lost in meditation, and looking as stupid and crumpled as only a conjurer's rabbit can do I resumed my hat, and the rabbit lolloped a lollop or so out of my way

"Dadda!" said Gip, in a guilty whisper

"What is it, Gip?" said I .

"I *do* like this shop, dadda"

"So should I," I said to myself, "if the counter wouldn't suddenly extend itself to shut one off from the door" But I didn't call Gip's attention to that "Pussy!" he said, with a hand out to the rabbit as it came lolloping past us, "Pussy, do Gip a magic!" and his eyes followed it as it squeezed through a door I had certainly not remarked a moment before Then this door opened wider, and the man with

one ear larger than the other appeared again. He was smiling still, but his eye met mine with something between amusement and defiance. "You'd like to see our show-room, sir," he said, with an innocent suavity. Gip tugged my finger forward. I glanced at the counter and met the shopman's eye again. I was beginning to think the magic just a little too genuine. "We haven't *very* much time," I said. But somehow we were inside the show-room before I could finish that.

"All goods of the same quality," said the shopman, rubbing his flexible hands together, "and that is the Best. Nothing in the place that isn't genuine Magic, and warranted thoroughly rum. Excuse me, sir!"

I felt him pull at something that clung to my coat sleeve, and then I saw he held a little, wriggling red demon by the tail—the little creature bit and fought and tried to get at his hand—and in a moment he tossed it carelessly behind a counter. No doubt the thing was only an image of twisted india-rubber, but for the moment——! And his gesture was exactly that of a man who handles some petty biting bit of vermin. I glanced at Gip, but Gip was looking at a magic rocking-horse. I was glad he hadn't seen the thing. "I say," I said, in an undertone, and indicating Gip, and the red demon with my eyes, "you haven't many things like *that* about, have you?"

"None of ours! Probably brought it with you," said the shopman—also in an undertone, and with a more dazzling smile than ever. "Astonishing what people *will* carry about with them unawares!" And then to Gip, "Do you see anything you fancy here?"

There were many things that Gip fancied there.

He turned to this astonishing tradesman with mingled confidence and respect. "Is that a Magic Sword?" he said.

"A Magic Toy Sword. It neither bends, breaks, nor cuts the fingers. It renders the bearer invincible in battle against any one under eighteen. Half-a-crown to seven and sixpence, according to size. These panoplies on cards are for juvenile knights-errant and very useful—shield of safety, sandals of swiftness, helmet of invisibility."

"Oh, daddy!" gasped Gip.

I tried to find out what they cost, but the shopman did not heed me. He had got Gip now, he had got him away from my finger; he had embarked upon the exposition of all his confounded stock, and nothing was going to stop him. Presently I saw with a qualm



of distrust and something very like jealousy that Gip had hold of this person's finger as usually he has hold of mine. No doubt the fellow was interesting, I thought, and had an interestingly faked lot of stuff, really *good* faked stuff, still——

I wandered after them, saying very little, but keeping an eye on this prestidigital fellow. After all, Gip was enjoying it. And no doubt when the time came to go we should be able to go quite easily.

It was a long, rambling place, that show-room, a gallery broken up by stands and stalls and pillars, with archways leading off to other departments, in which the queerest-looking assistants loafed and stared at one, and with perplexing mirrors and curtains. So perplexing, indeed, were these that I was presently unable to make out the door by which we had come.

The shopman showed Gip magic trains that ran without steam or clockwork, just as you set the signals, and then some very, very valuable boxes of soldiers that all came alive directly you took off the lid and said —— I myself haven't a very quick ear and it was a tongue-twisting sound, but Gip—he has his mother's ear—got it in no time. "Bravo!" said the shopman, putting the men back into the box unceremoniously and handing it to Gip. "Now," said the shopman and in a moment Gip had made them all alive again.

"You'll take that box?" asked the shopman.

"We'll take that box," said I, "unless you charge its full value. In which case it would need a Trust Magnate——"

"Dear heart! No!" and the shopman swept the little men back again, shut the lid, waved the box in the air, and there it was, in brown paper, tied up and—*with Gip's full name and address on the paper!*

The shopman laughed at my amazement.

"This is the genuine magic," he said. "The real thing."

"It's a little too genuine for my taste," I said again.

After that he fell to showing Gip tricks, odd tricks, and still odder the way they were done. He explained them, he turned them inside out, and there was the dear little chap nodding his busy bit of a head in the sagest manner.

I did not attend as well as I might. "Hey, presto!" said the Magic Shopman, and then would come the clear small "Hey, presto!" of the boy. But I was distracted by other things. It was being borne in upon me just how tremendously rum this place was, it was, so to

speaking, inundated by a sense of rumness. There was something a little rum about the fixtures even, about the ceiling, about the floor, about the casually distributed chairs. I had a queer feeling that whenever I wasn't looking at them straight they went askew, and moved about, and played a noiseless puss-in-the-corner behind my back. And the cornice had a serpentine design with masks—masks altogether too expressive for proper plaster.

Then abruptly my attention was caught by one of the odd-looking assistants. He was some way off and evidently unaware of my presence—I saw a sort of three-quarter length of him over a pile of toys and through an arch—and, you know, he was leaning against a pillar in an idle sort of way doing the most horrid things with his features! The particular horrid thing he did was with his nose. He did it just as though he was idle and wanted to amuse himself. First of all it was a short, blobby nose, and then suddenly he shot it out like a telescope, and then out it flew and became thinner and thinner until it was like a long, red, flexible whip. Like a thing in a nightmare it was! He flourished it about and flung it forth as a fly-fisher flings his line.

My instant thought was that Gip mustn't see him. I turned about, and there was Gip quite preoccupied with the shopman, and thinking no evil. They were whispering together and looking at me. Gip was standing on a little stool, and the shopman was holding a sort of big drum in his hand.

"Hide and seek, dad-da!" cried Gip. "You're He!"

And before I could do anything to prevent it, the shopman had clapped the big drum over him.

I saw what was up directly. "Take that off," I cried, "this instant! You'll frighten the boy. Take it off!"

The shopman with the unequal ears did so without a word, and held the big cylinder towards me to show its emptiness. And the little stool was vacant! In that instant my boy had utterly disappeared!

You know, perhaps, that sinister something that comes like a hand out of the unseen and grips your heart about. You know it takes your common self away and leaves you tense and deliberate, neither slow nor hasty, neither angry nor afraid. So it was with me.

I came up to this grinning shopman and kicked his stool aside.

"Stop this folly!" I said. "Where is my boy?"

"You see," he said, still displaying the drum's interior, "there is no deception——"

I put out my hand to grip him, and he eluded me by a dexterous movement I snatched again, and he turned from me and pushed open a door to escape "Stop!" I said, and he laughed, receding. I leapt after him—into utter darkness

*Thud!*

"Lor' bless my 'eart! I didn't see you coming, sir!"

I was in Regent Street, and I had collided with a decent-looking working man, and a yard away, perhaps, and looking a little perplexed with himself, was Gip There was some sort of apology, and then Gip had turned and come to me with a bright little smile, as though for a moment he had missed me

And he was carrying four parcels in his arm!

He secured immediate possession of my finger

For the second I was rather at a loss I stared round to see the door of the magic shop, and, behold, it was not there! There was no door, no shop, nothing, only the common pilaster between the shop where they sell pictures and the window with the chicks!

I did the only thing possible in that mental tumult, I walked straight to the kerbstone and held up my umbrella for a cab

"'Ansoms," said Gip, in a note of culminating exultation

I helped him in, recalled my address with an effort, and got in also Something unusual proclaimed itself in my tail-coat pocket, and I felt and discovered a glass ball With a petulant expression I flung it into the street

Gip said nothing

For a space neither of us spoke

"Dadda!" said Gip, at last, "that *was* a proper shop!"

I came round with that to the problem of just how the whole thing had seemed to him He looked completely undamaged—so far, good, he was neither scared nor unhinged, he was simply tremendously satisfied with the afternoon's entertainment, and there in his arms were the four parcels

Confound it! what could be in them?

"Um!" I said "Little boys can't go to shops like that every day"

He received this with his usual stoicism, and for a moment I was sorry I was his father and not his mother, and so couldn't suddenly

there, *coram publico*, in our hansom, kiss him After all, I thought, the thing wasn't so very bad

But it was only when we opened the parcels that I really began to be reassured Three of them contained boxes of soldiers, quite ordinary lead soldiers, but of so good a quality as to make Gip altogether forget that originally these parcels had been Magic Tricks of the only genuine sort, and the fourth contained a kitten, a little living white kitten, in excellent health and appetite and temper

I saw this unpacking with a sort of provisional relief I hung about in the nursery for quite an unconscionable time

That happened six months ago And now I am beginning to believe it is all right The kitten had only the magic natural to all kittens, and the soldiers seem as steady a company as any colonel could desire And Gip—— ?

The intelligent parent will understand that I have to go cautiously with Gip

But I went so far as this one day I said, "How would you like your soldiers to come alive, Gip, and march about by themselves ?"

"Mine do," said Gip "I just have to say a word I know before I open the lid"

"Then they march about alone ?"

"Oh, *quite*, dad-da I shouldn't like them if they didn't do that"

I displayed no unbecoming surprise, and since then I have taken occasion to drop in upon him once or twice, unannounced, when the soldiers were about, but so far I have never discovered them performing in anything like a magical manner

It is so difficult to tell

There's also a question of finance I have an incurable habit of paying bills I have been up and down Regent Street several times, looking for that shop I am inclined to think, indeed, that in that matter honour is satisfied, and that, since Gip's name and address are known to them, I may very well leave it to these people, whoever they may be, to send in their bill in their own time

## A PORTRAIT

**I**T is at the age of eighty that I picture him, without the vestige of a stoop, rather above middle height, of very well-proportioned figure, whose flatness of back and easy movements were the admiration of all who saw them. His iron-grey eyes had lost none of their colour, they were set-in deep, so that their upper lids were invisible, and had a peculiar questioning directness, apt to change suddenly into twinkles. His head was of fine shape—one did not suspect that it required a specially made hat, being a size larger than almost any other head, it was framed in very silky silvery hair, brushed in an arch across his forehead, and falling in becoming curves over the tips of his ears, and he wore always a full white beard and moustaches, which concealed a jaw and chin of great determination cleft by a dimple. His nose had been broken in his early boyhood, it was the nose of a thinker, broad and of noticeable shape. The colour of his cheeks was a fine dry brown, his brow very capacious, both wide and high, and endowed with a singular serenity. But it was the balance and poise of his head which commanded so much attention. In a theatre, church, concert-hall, there was never any head so fine as his, for the silvery hair and beard lent to its massiveness a curious grace and delicacy.

The owner of that head could not but be endowed with force, sagacity, humour, and the sense of justice. It expressed, indeed, his essential quality—equanimity, for there were two men in him—he of the chin and jaw, a man of action and tenacity, and he of the nose and brow, the man of speculation and impersonality, yet these two were so curiously balanced and blended that there was no harsh ungraceful conflict. And what made this equanimity so memorable was the fact that both his power of action and his power of speculation were of high quality. He was not a commonplace person content with a little of both. He wanted and had wanted throughout life, if one may judge by records, a good deal of both, ever demanding with one half of him strong and continuous action, and with the other half,

high and clean thought and behaviour The desire for the best both in material and spiritual things remained with him through life He felt things deeply , and but for his strange balance, and a yearning for inward peace which never seems to have deserted him, his ship might well have gone down in tragedy

To those who had watched that journey, his voyage through life seemed favourable, always on the top of the weather He had worked hard, and he had played hard, but never too hard And though one might often see him irritated, I think no one ever saw him bored He perceived a joke quicker than most of us , he was never eccentric, yet fundamentally independent of other people's opinions, and perhaps a little unconscious that there were better men than he Not that he was conceited, for of this quality, so closely allied to stupidity and humbug, he had about as much as the babe unborn He was, indeed, a natural foe to anæmia in any of its forms, just as he was instinctively hostile to gross bull-beef men and women The words, " a bullying chap," were used by him as crushing dispraise I can recall him now in his chair after dinner, listening to one, who, puffing his cigarette, is letting himself go on a stream of robustious, rather swaggering complacencies , with what a comprehending straight look he regards the speaker, not scornful, not sarcastic, but simply, as it were, saying " No, my young buck, for all your fine full-blooded talk, and all your red face, you are what I see you to be, and you will do what I tell you to do ! " Such men had no chance with him when it came to the tug of war , he laid his will on them as if they had been children

He was that rather rare thing, a pure-blooded Englishman , having no strain of Scotch, Welsh, Irish, or foreign blood in his pedigree for four hundred years at least He sprang from a long line of farmers intermarrying with their kind in the most southern corner of Devonshire, and it is probable that Norse and British blood were combined in him in a high state of equality Even in the actual situation of his place of origin, the principle of balance had been maintained, for the old farmhouse from which his grandfather had emerged had been perched close to the cliff Thus, to the making of him had gone land and sea, the Norseman and the Celt

Articled to the Law at the age of sixteen by his father, a Plymouth merchant, whose small ancient ships traded to the Mediterranean in fruits, leather, and wines, he had come to London, and at the earliest possible date (as was the habit with men in those times) had been

entered on the rolls as a solicitor. Often has he told me of the dinner he gave in honour of that event. "I was a thread-paper, then," he would say (indeed, he never became fat) — "We began with a barrel of oysters." About that and other festivities of his youth, there was all the rich and rollicking flavour of the days of *Pickwick*. He was practically dependent on his own exertions from the time he began to practise his profession, and it was characteristic of him that he never seems to have been hard pressed for money. The inherent sanity and moderation of his instincts preserved him, one imagines, from the financial ups and downs of most young men, for there was no niggardliness in him, and a certain breadth of conception characterised his money affairs throughout life. It was rather by the laws of gravity, therefore, whereby money judiciously employed attracts money, and the fact that he lived in that money-maker's Golden Age, the nineteenth century, that he had long been (at the age of eighty) a wealthy man. Money was to him the symbol of a well-spent, well-ordered life, provocative of warmth in his heart because he loved his children, and was careful of them to a fault. He did not marry till he was forty-five, but his feeling for the future of his family manifested itself with the birth of his first child. Selecting a fair and high locality, not too far away from London, he set himself at once to make a country place, where the little things should have fresh air, new milk, and all the fruits of the earth, home-grown round them. Quite wonderful was the forethought he lavished on that house and little estate stretching down the side of a hill, with its walled gardens, pasture, corn-land, and coppice. All was solid, and of the best, from the low four-square red brick house with its concrete terrace and French windows, to the cow-houses down by the coppice. From the oak trees, hundreds of years old, on the lawns, to the peach trees just planted along the south sunny walls. But here too, there was no display for the sake of it, and no extravagance. Everything was at hand, from home-baked bread to mushrooms wild and tame, from the stables with their squat clock-tower to pigsties, from roses that won all the local prizes to bluebells, but nothing redundant or pretentious.

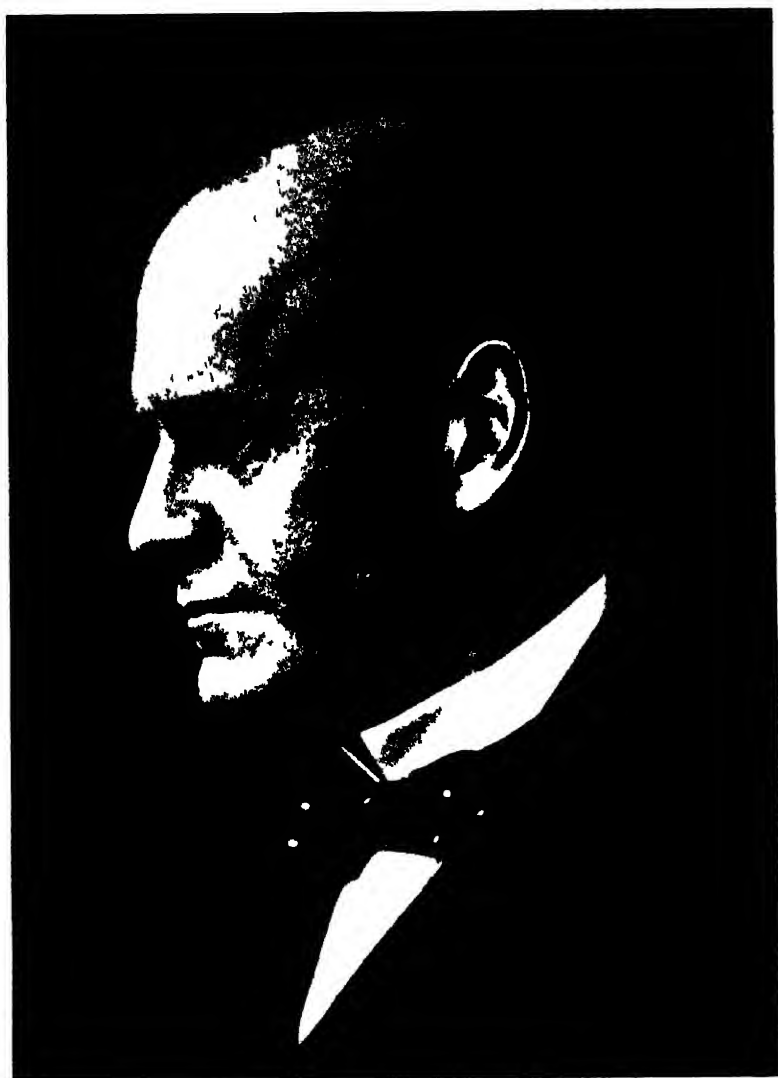
The place was an endless pleasure to him, who to the last preserved his power of taking interest, not only in great, but in little things. Each small triumph over difficulty—the securing of hot water in such a quarter, the better lighting of another, the rescue of the nectarines from wasps, the quality of his Alderney cows, the encouragement of

rooks—afforded him as much simple and sincere satisfaction as every little victory he achieved in his profession, or in the life of the Companies which he directed. But with all his shrewd practical sense, and almost naïve pleasure in material advantage, he combined a very real spiritual life of his own. Nor was there anything ascetic in that inner life. It was mellow as the music of Mozart, his most beloved composer, Art and Nature, both had their part in it. He was, for instance, very fond of opera, but only when it could be called 'grand', and it grieved him that opera was no longer what it had been, yet was it secretly a grave satisfaction that he had known those classical glories denied to the present generation. He loved indeed almost all classical music, but (besides Mozart) especially Beethoven, Gluck, and Meyerbeer, whom he insisted (no less than Herbert Spencer) on considering a great composer. Wagner he tried very hard to appreciate and, after visiting Bayreuth, even persuaded himself that he had succeeded, though he never ceased to point out the great difference that existed between this person and Mozart. He loved the Old Masters of painting, having for favourites amongst the Italians Rafael, Correggio, Titian, Tintoretto, and amongst Englishmen Reynolds and Romney. On the other hand, he regarded Hogarth and Rubens as coarse, but Vandyke he very much admired, because of his beautiful painting of hands, the hall-mark, he would maintain, of an artist's quality. I cannot remember his feeling about Rembrandt, but Turner he certainly distrusted as extravagant. Botticelli and the earlier masters he had not as yet quite learned to relish, and Impressionism, including Whistler, never really made conquest of his taste, though he always resolutely kept his mind open to what was modern—feeling himself young at heart.

Once on a spring day, getting over a stile, I remember him saying "Eighty! I can't believe it. Seems very queer. I don't feel it Eighty!" And, pointing to a blackbird that was singing, he added "That takes the years off you!" His love of Nature was very intimate, simple, and unconscious. I can see him standing by the pond of a summer evening watching the great flocks of starlings that visited those fields, or, with his head a little to one side, listening rapturously to a skylark. He would contemplate, too, with a sort of serene passion, sunset effects, and every kind of view.

But his greatest joy in life had been his long summer holidays, in Italy or among the Alps, and his memory was a perfect storehouse of





Попп

Ingelsworth



peaks, passes, and arrivals at Italian inns. He had been a great walker, and, as an old man, was still very active. I can remember him on horseback at the age of sixty, though he had never been a sportsman—not being in the way of hunting, having insufficient patience for fishing, and preferring to spend such time as he might have had for shooting, in communing with his beloved mountains. His love for all kinds of beauty, indeed, was strangely potent, and perhaps the more natural and deep for its innocence of all tradition and formal culture. He got it, I think, from his mother, of whom he always spoke with reverence as “the most beautiful woman in the Three Towns.” Yes, his love of beauty was a sensuous, warm glow pervading the whole of him, secretly separating him from the majority of his associates. A pretty face, a beautiful figure, a mellow tune, the sight of dancing, a blackbird’s song, the moon behind a poplar tree, starry nights, sweet scents, and the language of Shakespeare—all these moved him deeply, the more perhaps because he had never learned to express his feelings. His attempts at literature indeed were strangely naïve and stilted, his verse, in the comic vein, rather good, but all, as it were, like his period, ashamed to express any intimate feeling except in classical language. Yet his literary tastes were catholic, Milton was his favourite poet, Byron he also admired, Browning he did not care for, his favourite novelist was George Eliot, and, curiously enough—in later life—Turgenev. I well remember when the translated volumes of that author were coming out, how he would ask for another of those yellow books. He did not know why he liked them, with all those “crack-jaw” Russian names, but assuredly it was because they were written by one who worshipped beauty.

The works of Dickens and Thackeray he read with appreciation, on the whole, finding the first perhaps a little too grotesque, and the second a little too satiric. Scott, Trollope, Marryat, Blackmore, Hardy, and Mark Twain also pleased him; but Meredith he thought too “misty.”

A great theatre-goer all his life, he was very lukewarm towards modern actors, comparing them adversely with those constellations of the past, Edmund and Charles Kean, Charlie Mathews, Farren, Power, “little Robson,” and Helen Faucit. He was, however, a great lover of Kate Vaughan’s dancing, an illustration of the equanimity of one who had formed his taste on Taglioni.

Irving he would only accept in *Louis XI*, *The Bells*, and, I think,

*Charles I*, and for his mannerisms he had a great aversion. There was something of the old grand manner about his theatre habits. He attended with the very best and thinnest lavender kid gloves on his hands, which he would hold up rather high and clap together at the end of an act which pleased him; even, on memorable occasions, adding the word "Bravo." He never went out before the end of a play, however vehemently he might call it "poor stuff," which, to be quite honest, he did about nine times out of ten. And he was ever ready to try again, having a sort of touching confidence in an art which had betrayed him so often. His opera hats were notable, usually of such age as to have lost shape, and surely the largest in London. Indeed, his dress was less varied than that of any man I have ever seen, but always neat and well-cut, for he went habitually to the best shops, and without eccentricity of any kind. He carried a repeating gold watch and thin round gold chain which passed, smooth and sinuous as a little snake, through a small black seal with a bird on it, and he never abandoned very well made side-spring boots with cork soles, greatly resenting the way other boots dirtied his hands, which were thin and brown with long polished nails, and blue veins outstanding. For reading only, he wore tortoise-shell eyeglasses, which he would perch low down on the bridge of his nose, so that he could look over them, for his eyes were very long-sighted. He was extremely fastidious in his linen, and all personal matters, yet impatient of being mollycoddled, or in any way over-valeted. Even on the finest days, he carried an umbrella, the ferrule of which, from his habit of stumping it on the pavement, had a worn and harassed look, and was rarely more than half present.

Having been a Conservative Liberal in politics till well past sixty, it was not until Disraeli's time that he became a Liberal Conservative. This was curious, for he always spoke doubtfully of "Dizzy," and even breathed the word "humbug" in connection with him. Probably he was offended by what he termed "the extravagance" in Dizzy's rival. For the Duke of Devonshire and Lord Salisbury he had respect without enthusiasm, and conceived for John Bright a great admiration as soon as he was dead. But on the whole the politician who had most attracted him had been Palmerston, because—if memory serves—he had in such admirable degree the faculty of "astonishing their weak nerves." For, though never a Jingo, and in later days both cautious and sane in his Imperialism, he had all

a Briton's essential deep-rooted distrust of the foreigner. He felt that they were not quite safe, not quite sound, and must from time to time be made to feel this. Born two years after the battle of Waterloo, he had inherited a certain high pride of island birth. And yet in one case, where he was for years in close contact with a foreigner, he conceived for him so grave a respect that it was quite amusing to watch the discomfiture of his traditional distrust. It was often a matter of wonder amongst those who knew him that a man of his ability and judgment had never even sought to make his mark in public affairs. Of the several reasons for this, the chief was, undoubtedly, the extraordinary balance of his temperament. To attain pre-eminence in any definite department of life would have warped and stunted too many of his instincts, removed too many of his interests, and so he never specialised in anything. He was quite unambitious, always taking the lead in whatever field he happened to be, by virtue of his great capacity and will-power, but never pushing himself, and apparently without any life-aim, but that of leading a sane, moderate, and harmonious existence.

And it is for this that he remains written on the national page, as the type of a lost and golden time, when life to each man seemed worth living for its own sake, without thought of its meaning as a whole, or much speculation as to its end. There was something classical, measured, and mellow in his march adown the years, as if he had been god-mothered by Harmony. And yet, though he said his prayers and went to church, he could not fairly have been called a religious man, for at the time when he formed his religious habits, "religion" had as yet received no shocks, and reigned triumphant over an unconscious nation whose spirit was sleeping, and when "religion," disturbed to its foundations, began to die, and people all round him were just becoming religious enough to renounce the beliefs they no longer held, he was too old to change, and continued to employ the mechanism of a creed which had never really been vital to him. He was in essence pagan. All was right with his world! His love was absorbed by Nature, and his wonder by the Great Starry Scheme he felt all around. This was God to him; for it was ever in the presence of the stars that he was most moved to a sense of divine order. Looking up at those tremulous cold companions he seemed more reverent, and awed, than ever he was in the face of creeds or his fellow-man. Whether stirred by the sheer beauty of Night, or by its

dark immensity swarming with those glittering worlds, he would stand silent, and then, perhaps, say wistfully "What little bits of things we are! Poor little wretches!" Yes, it was then that he really worshipped, adoring the great wonders of Eternity. No one ever heard him talk with conviction of a future life. He was far too self-reliant to accept what he was told, save by his own inner voice, and that did not speak to him with certainty. In fact, as he grew old, to be uncertain of all such high things was part of his real religion, it seemed to him, I think, impertinent to pretend to intimate knowledge of what was so much bigger than himself. But neither his conventional creed nor that awed uncertainty which was his real religion were ever out of hand, they jogged smoothly on in double harness, driven and guided by a supream power—his reverence for Life. He abhorred fanaticism. In this he truly mirrored the spirit of that great peacefully expanding river, the Victorian Era, which began when he came of age. And yet, in speaking before him of deep or abstract things, it was not safe to reckon without his criticism, which would sometimes make powerfully shrewd deductions out of the sheer logical insight of a nature neither fundamentally concerned with other worlds, nor brought up to the ways of discussion. He was pre-eminently the son of a time between two ages—a past age of old, unquestioning faith in Authority, a future age of new faith, already born but not yet grown. Still sheltering in the shade of the old tree which was severed at the roots and toppling, he never, I think, clearly saw—though he may have had glimpses—that men, like children whose mother has departed from their home, were slowly being forced to trust in, and be good to, themselves and to one another, and so to form out of their necessity, desperately, unconsciously, their new great belief in Humanity. Yes, he was the son of *a time between two ages*—the product of an era without real faith—an individualist to the core.

His attitude towards the poor, for instance, was essentially that of man to man. Save that he could not tolerate impostors (one of his favourite words), and saw through them with almost startling rapidity, he was compassionate to any who had fallen on evil fortune, and especially to those who had been in any way connected with him. But in these almonary transactions he was always particularly secretive, as if rather doubting their sagacity, and the wisdom of allowing them to become known—himself making up and despatching the parcels of old clothes, and rather surreptitiously producing such coins and

writing such cheques as were necessary. But "the poor," in bulk, were always to him the concern of the Poor Law pure and simple, and in no sense of the individual citizen. It was the same with malefactors, he might pity as well as condemn them, but the idea that the society to which he and they belonged was in any way responsible for them, would never have occurred to him. His sense of justice, like that of his period, was fundamentally based on the notion that every man had started with equal, or at all events, with quite sufficient opportunities, and must be judged as if he had. But, indeed, it was not the custom in his day to concern oneself with problems outside one's own class. Within that class, and in all matters domestic, no man was ever born with a nicer sense of justice. It was never overridden by his affections, very seldom, and that with a certain charming *naïveté*, by his interests. This sense of justice, however, in no way prevented him from being loved, for, in spite of a temper apt to take fire, flare up, and quickly die down again, he was one of the most lovable of men. There was not an ounce of dourness or asperity in his composition. His laughter was of a most infectious kind, singularly spontaneous and delightful, resembling the laughter of a child. The change which a joke wrought in the aspect of his large, dignified, and rather noble face, was disconcerting. It became wrinkled, or, as it were, crumpled, and such a twinkling overcame his eyes as was frequently only to be extinguished by moisture. "That's rich!" was his favourite expression to describe what had tickled him, for he had preserved the use of Devonshire expressions, bringing them forth, from an intimate pet drawer of memory, and lingering over them with real gusto. He still loved, too, such Devonshire dishes of his boyhood, as "junket" and "toad in the hole", and one of his favourite memories was that of the meals snatched at the old coaching Inn at Exeter, while they changed the horses of the Plymouth to the London coach. Twenty-four hours at ten miles an hour, without ever a break! Glorious drive! Glorious the joints of beef, the cherry brandy! Glorious the old stage coachman, a "monstrous fat chap" who at that time ruled the road!

In the City, where his office was situate, he was wont, though at all times a very moderate eater, to frequent substantial, old-fashioned hostelrys such as Roche's, Pim's, or Birch's, in preference to newer and more pretentious places of refreshment. He had a remarkable palate too, and though he drank very little, was, in his prime,

considered as fine a judge of wine as any in London Of tea he was particularly fond, and always consumed the very best Indian, made with extreme care, maintaining that the Chinese variety was only fit for persons of no taste

He had little liking for his profession, believing it to be beneath him, and that Heaven had intended him for an advocate, in which he was probably right, for his masterful acumen could not have failed to assure him a foremost position at the Bar And in him, I think, it is certain that a great Judge was lost to the State Despite this contempt for what he called the "pettifogging" character of his occupation, he always inspired profound respect in his clients, and among the shareholders of his Companies, of which he directed several, his integrity and judgment stood so high that he was enabled to pursue successfully a line of policy often too comprehensive and far-seeing for the temper of the times The reposeful dignity, and courage, of his head and figure when facing an awkward General Meeting could hardly have been exceeded He sat, as it were, remote from its gusty temper, quietly determining its course

Truly memorable were his conflicts with the only other man of his calibre on those Boards, and I cannot remember that he was ever beaten He was at once the quicker tempered and more cautious And if he had not the other's stoicism and iron nerve, he saw further into the matter in hand, was more unremitting in his effort, equally tenacious of purpose, and more magnetic In fact, he had a way with him

But, after all said, it was in his dealings with children that the best and sweetest side of his personality was manifested With them he became completely tender, inexhaustibly interested in their interests, absurdly patient, and as careful as a mother No child ever resisted him, or even dreamed of doing so From the first moment they loved his white hair and beard, his "feathers" as one little thing called them They liked the touch of his thin hand, which was never wet or cold, and, holding to it, were always ready to walk with him—wandering with complete unanimity, not knowing quite where or for what reason How often have I not watched him starting out on that high-adventure with his grandson, his face turned gravely down towards a smaller face turned not quite so gravely up, and heard their voices tremendously concerned with all the things they might be going to do together! How often have I not seen them coming

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back, tired as cats, but still concerned about what was next going to happen! And children were always willing to play cricket with him because he bowled to them very slowly, pitching up what he called "three-quarter" balls, and himself always getting "out" almost before he went in. For, though he became in his later years a great connoisseur of cricket, spending many days at Lord's or the Oval, choosing out play of the very highest class, and quite impatient of the Eton and Harrow Match, he still performed in a somewhat rococo fashion, as of a man taught in the late 'twenties of the last century, and having occasion to revive that knowledge about 1895. He bent his back knee, and played with a perfectly crooked bat, to the end that when he did hit the ball, which was not too often, it invariably climbed the air. There was, too, about his batting, a certain vein of recklessness or bravado, somewhat out of keeping with his general character, so that, as has been said, he was never in too long. And when he got out he would pitch the bat down as if he were annoyed, which would hugely please his grandson, showing of course that he had been trying his very best, as indeed he generally had. But his bowling was extremely impressive, being effected with very bent knees, and a general air of first putting the ball to the eye, as if he were playing bowls, in this way he would go on and on giving the boy "an innings," and getting much too hot. In fielding he never could remember on the spur of the moment whether it was his knee or his feet that he ought to close, and this, in combination with a habit of bending rather cautiously, because he was liable to lumbago, detracted somewhat from his brilliance, but when the ball was once in his hands, it was most exciting—impossible to tell whether he would throw it at the running batsman, the wicket, or the bowler, according as the game appeared to him at the moment to be double wicket, single wicket, or rounders. He had lived in days when games were not the be-all and end-all of existence, and had never acquired a proper seriousness in such matters. Those who passed from cricket with him to cricket in the cold wide world found a change for which at first they were unable to account. But even more fascinating to children than his way of playing cricket was his perfect identification with whatever might be the matter in hand. The examination of a shell, the listening to the voice of the sea imprisoned in it, the making of a cocked hat out of the *Times* newspaper, the doing up of little buttons, the feeding of pigeons with crumbs, the holding fast of a

tiny leg while walking beside a pony, all these things absorbed him completely, so that no visible trace was left of the man whose judgment on affairs was admirable and profound. Nor, whatever the provocation, could he ever bring himself to point the moral of anything to a child, having that utter toleration of their foibles which only comes from a natural and perfectly unconscious love of being with them. His face, habitually tranquil, wore in their presence a mellow look of almost devil-may-care serenity.

Their sayings, too, he treasured, as though they were pearls. First poems, such as

I sorr a worm,  
It was half-ly dead,  
I took a great spud,  
And speared through his head,

were to him of singular fair promise. Their diagnoses of character, moreover, especially after visiting a circus, filled him with pure rapture, and he would frequently repeat this one

"Father, is Uncle a clever man?"

"H'm! well—yes, certainly."

"I never seen no specimens. He can't balance a pole on his nose, for instance."

To the declining benison of their prayers, from their "darling father and mother," to "all poor people who are in distress," he loved to listen, not so much for the sentiments expressed, as because, in their little night-gowns, they looked so sweet, and were so round-about in their way of getting to work.

Yes, children were of all living things his chosen friends, and they knew it.

But in his long life he made singularly few fast friendships with grown-up people, and, as far as I know, no enemies. For there was in him, despite his geniality, a very strong vein of fastidiousness, and such essential deep love of domination, that he found, perhaps, few men of his own age and standing to whom he did not feel natively superior. His most real and lifelong friendship was for a certain very big man with a profound hatred of humbug and a streak of "the desperate character" in him. They held each other in the highest esteem, or, as they would probably have put it, swore by one another; the one grumbling at, but reverencing, the other's high and resolute equanimity; the other deploring and admiring the one's deep and

generous recklessness The expressions "Just like John, the careful fellow!" "Just like Sil, reckless beggar!" were always on their lips, for like all their generation they were sparing of encomium; and great, indeed, must have been their emotion before they would show their feelings Dear as they were to each other's hearts, they never talked together of spiritual things, they never spoke in generalities, but gravely smoking their cigars, discussed their acquaintances, investments, wine, their nephews and grandchildren, and the affairs of the State—condemning the advertising fashion in which everything was now done Once in a way they would tell a story—but they knew each other's stories too well, once in a way quote a line of Byron, Shakespeare, or Milton, or whistle to each other, inharmoniously, a bar or two from some song that Grisi, Mario, or Jenny Lind had sung Once in a way memories of the heyday of their youth, those far-off golden hours, stealing over them, they would sit silent, with their grave steady eyes following the little rings of bluish smoke . Yes, for all their lack of demonstration, they loved each other well

I seem still to see the subject of this portrait standing at his friend's funeral one bleak November day, the pale autumn sunlight falling on the silver of his uncovered head a little bowed, and on his grave face, for once so sad I hear the tones of his voice, still full and steady, and from the soul in his eyes, looking, as it were, through and through those forms of death to some deep conclusion of his own, I know how big and sane and sweet he was.

His breed is dying now, it has nearly gone But as I remember him with that great quiet forehead, with his tenderness, and his glance which travelled to the heart of what it rested on, I despair of seeing his like again For, with him there seems to me to have passed away a principle, a golden rule of life, nay, more, a spirit—the soul of Balance It has stolen away, as in the early morning the stars steal out of the sky *He* knew its tranquil secret, and where he is, there must it still be hovering.

## A WOMAN

JOHN GALSWORTHY

A TRAVELLER was writing to his friend . . . "We were sitting on the *stoep* Above the pines the long line of Table Mountain was like a violet shadow two shades deeper than the sky We had no light except the 'Cross,' and a swarm of other stars, it was a rare night, dark crystal

"There had been a dance, and the girls had gone to bed, all the shutters were closed, the old house against our backs looked very silent, and flat, and long Only the door was open, and we sat round it The sparks from our pipes writhed about in the air, or, falling on to the *stoep*, expired like the words dropping from our mouths You know the kind of talk In the morning we had played cricket amongst the trees—a hit into the vineyards, 'five and out'—girls and all In the afternoon we had played tennis, on a half-made court—the girls too In the evening we had danced Some had hitched up, and departed Some had gone to bed We four were left, and old Juno, the pointer, with her head on her paws, and her nose wrinkling at the squeaking of some tiny beast in the darkness Little Byng, with his waistcoat unbuttoned, was sitting quite square above his parted legs, round-faced little man, no neck to speak of, straw-coloured hair, and eyes without lashes, just like a dissipated egg You know him, Billy Byng, best-hearted little man, they say, in Cape Colony Young Sanley—married to one of the Detwell girls, sleeping a healthy sleep already indoors—such a neat, smooth chap, great Scott! yes, and how commonplace! with his pale moustache, and his high white forehead, and his slim nose, and his well-cut clothes, and his tidy made-up tie And our host—you know him, a little too alert, a little too dark, a little too everything, but a right good fellow, engaged to the other Detwell girl, who was perhaps thinking of him, and perhaps wasn't, in her bed just over our heads Well, we were talking, profaning things a bit, not much, you know, couldn't lay claim to original profanity, just tarbrushing the surface We were all a bit bored, rather sleepy, and accordingly just a little too jovial. Even

Juno, who's at least as wise as any human, was pondering somewhat gloomily over her master's intention of taking us to shoot pheasants at daybreak—'before it was too hot' We had been there before, we knew it—that pheasant shooting, up stony slopes in a tangle of cover, with the chance of a couple of shots, at most, producing one disembowelled bird Every now and then one of us would get up, walk to the edge of the *stoep*, stare into the dark vineyard, stretch as if he were going to make a move, and after all yield to our host's : 'Just one more, boys !'

"All of a sudden young Sanley murmured :

" 'I heard footsteps'

" 'Some nigger,' said our host

"And then at the far end of the *stoep* a woman appeared, walked straight into our midst, and sat down It was pretty startling, and absurd Little Byng seemed absolutely transfixed, he blinked his lashless eyes, and seemed to twitch all over his face Sanley got very pale and nervously tapped the table Our host alone kept the use of his tongue

" 'Corrie !' he said

" 'Why not ? Give me a drink, Jack Allen'

"Our host, in a kind of surreptitious way, poured brandy into a glass and added seltzer

"The woman held out her hand for it, and as she tilted her chin to drink, the cloak fell from her shoulders, and we could see her neck and arms gleaming, out of her evening dress.

" 'Thanks !' she said, 'I wanted that' Then she bent over the table and leaned her face on her hand Well, no one spoke, and we all cast secret looks back at the house Sa. ley reached out his hand quietly and drew the door to

"The woman said

" 'I saw the bowls of your pipes, and heard your voices. You're not too lively now'

"Her voice wasn't loud, but it sounded wilfully coarsened Her lips were slightly parted above her forefinger crooked across her chin Her nostrils seemed to broaden as she looked at us, in a sort of distrustful way She wore no hat, and her hair was like a little black patch of the night over her brow Her eyes, how can I describe them ? They seemed to see everything, and to see nothing They were so intent, and mournful, and defiant, hard, if you like, tragic, too I

remembered, now, where I had met her—though I hadn't been ten days in the Colony—at the supper party of a man called Brown, after the theatre, very vulgar and noisy

"The most notorious woman in Cape Town! Her house had been pointed out to me, too, just at the corner of the Malay quarter, a little house, painted mauve, with large red flowers starring its front

"The most notorious woman in Cape Town! I looked at our host. He was biting his fingers. At Byng. His mouth was a little open, as if he were about to make a very sage remark. Sanley struck me as looking altogether too pitifully decent

"Our host broke the silence

"'How? Where? Eh! What?'

"'Staying down there at Charlie Lennard's, what a beast! Oh! what a beast!'

"Her eyes rested, wistfully it seemed to me, on each of us in turn

"'It's a beautiful night, isn't it?'

 she said

"Little Byng kicked out his foot, as if he would have sent something sprawling, and began stuttering out

"'I beg pardon—I beg pardon.' I saw the old pointer thrust her nose against the woman's knees. Something moved, back in the house, we all looked round with a start. Then the woman began to laugh, almost noiselessly, as though she had an unholy understanding of our minds, as if she would never leave off. I saw Sanley tear at his hair, and stealthily smooth it down again. Our host frowned horribly, and thrust his hands so deep into his pockets that it seemed to me they must go through the linings. Little Byng almost bounded up and down in his chair. Then just as suddenly, the woman stopped laughing, there was dead silence. You could only hear the squeaking of the tiny beast. At last the woman said

"'Doesn't it smell good to-night, it's quiet, too. Here! let me have another drink!' She took the glass our host held out. 'Your very good health,' she said, 'my respectable friends!'

"Our host suddenly resumed his seat, crossed his arms and sighed. A pitiful little noise he made of it

"'I'm not going to hurt you,' she said, 'I wouldn't hurt a fly to-night—it smells like home. Look!' She held out the edge of her skirts to us. 'Dew! I'm dripping, isn't it sweet?'

"Her voice had lost all coarseness—it might have been your mother or sister speaking, it was ever so queer, and little Byng sputtered

out 'Too bad! too bad!' but whether to her, or of her, or to us—no one knew

" 'I've walked miles to-night,' she said 'Haven't had such a walk since I was a girl' There was a kind of tone in her voice that hurt me horribly, and suddenly young Sanley rose

" 'Excuse me, Allen!' he stammered 'it's very late Going to turn in?' I caught the gleam of his eyes on the woman

" 'Oh! are you going?' she said There was a sort of regret, a sort of something innocent and unconscious in her voice, that seemed regularly to pierce a bag of venom in that smooth young man

" 'Madam, I am May I ask why you came here? My wife——' He stopped, groped for the door, pulled it open, smiled his mean tidy smile and vanished

" The woman had risen, and she gave a sort of laugh

" '*His wife!* Oh! Well, I wish her happiness Ah! my God! I *do* wish her happiness—I *do*, and yours, Jack Allen, and yours, if you have one Billy Byng, you remember me—you remember when I first—to-night, I thought—I thought——' She hid her face One by one we slunk off the *stoep*, and left her, sobbing her heart out before the house

" God knows what she was thinking of! God knows what sort of things lurk round us, and leap out—thank Heaven! not often—from the darkness, as that did!

" I crept back later to the edge of the vineyard

" There she was still, and, beside her, little Byng, with his toes turned out, bending over her fingers Then I saw him draw them under his arm, pat them with his other hand, and gazing up at the sky, lead her gently out into the darkness." . .

**R. MURRAY GILCHRIST**

**1868-1917**

## **A STROLLING PLAYER**

**A**T the bend of the hill-road, where one loses sight of the distant village, a stream had overflowed before the last frost, and the limestone cart-way, with its smoothly-worn cobbles and its lattice of red and yellow and black leaves, was covered for many yards with a transparent sheet of ice. In daylight it resembled a mosaic of arabesque device, but now, reflecting the last scarlet shred of the afterglow, it suggested a river of blood. All around grew dwarf sycamores and elms and silver birches, their bare timber streaked with ribbons of frozen sleet.

When the wagon reached this perilous place, Joe Ascham got down from the high shaft, and, with a few sad clucks of encouragement, strove to make the young white horse proceed. Its shoes had not been sharpened, however, and at the first attempt it slipped back with such violence that the thing inside the wagon was jolted roughly against the side. At the sound the old man winced and crept to the back and drew the burden again into the middle, covering it neatly with the strip of clean sacking.

"Theer munna be a scrat on et," he muttered, "else Johanna'll breck her heart altogether. Ef et's all reet, hoo'll be pleased, poor soul, for et's th' best whōak I've ever seen! Dane said as et cem off one o' th' big trees i' Whetstone Dale."

He caught the bridle again and pulled with all his might, and the horse felt its way very slowly, without lifting its hoofs from the ground. The road turned abruptly again, at a corner with a steep and barren acclivity on the right hand, and on the left a dangerous ravine filled with ancient firs and rough stones. The wind was rising, and the place seemed full of whispers.

There the horse slipped for the second time, and the sacking fell in a heap at the back. In the waning light was visible a short and narrow coffin, with a bright metal name-plate. Joe covered it again, and jerked the bridle almost furiously, but the horse would not move.

"O Boxer, my lad, dunna fail me at such a time," he cried querulously. "Johanna's waitin' theer all alone, an' we're late enaa already!"



Some one rose from the low wall and came towards him His eyes were wet, and he could only distinguish the outline of a woman's figure

"Can I help you at all?" she inquired, in a thin, eager voice

"I 'ld tek et very kindly, mam, ef yo'ld set inside an' howd et i' position I dunna want et spoilin' I could mek Boxer go, ef on'y I werena afeard o' shakin' et"

"What is inside?" she said, lifting her bundle and preparing to climb

"Et's a coffin, mam my poor Michal's—my dowter's"

The woman shivered, but got in without a word and knelt and clasped her arms about the thing Joe dragged Boxer forward, and in a few minutes they had reached the level There the woman rose to alight, but the old man put out his hand

"I reckon yo're goin' my way over th' moor," he said "Et's five mile to my house—midway across, an' yo're welcoom to ride ef yo' will"

She thanked him "I want to reach Great Hucklow to-night, if I can," she said "I'm a strolling player, and I'm trying to get an engagement with Bainbridge's company I shall be very glad to ride with you, for I've walked ever since daybreak"

Darkness fell and the air grew thick with the oncoming of snow. Ascham struck a match and lighted his lantern and walked on in front The woman saw that they had reached the moorland on either side was a low bank of heather-covered turf, broken here and there with frozen water holes A few ragged sheep followed in the wake of the wagon The road was no longer of limestone, but of brown sand and pebbles, the shadow of the wheels stretched behind and broke amidst the moving sheep

A few snowflakes fluttered downwards Ascham stopped the horse and came again to the side The woman was still crouching with her arms about the coffin

"I reckon et were a strange thing o' me to ask," he said, "but yo' see I were baffled Et's gotten' mortal cowed I've got th' horse rug i' front,—yo' may's well put it on an' sit on the shaft Yo'll hev to step daan first"

She obeyed He put the lantern on the ground and found the rug He saw that she was very wan and exhausted Her face was a wasted oval, the skin about her eyes was blue with weeping and sleeplessness She wore a shabby black silk cloak, trimmed with moth-eaten fur, the hat that shaded her forehead was of dingy yellow lace She might have been any age between thirty-five and fifty.

When Joe had pinned the rug over her breast, he helped her to the shaft and she sat there with her feet dangling. The snow was falling heavily now, the sheep had retreated to the hollows, and even the sides of the road were invisible. Suddenly the old man lagged and fell behind to walk beside the stranger.

"I want to talk, mam," he said. "I want to forget things. Yo've seen misfortun', hevna yo'?"

"Yes, I've seen misfortune," she replied. "So much misfortune that I wish the coffin had been made for me. But all of us have our share. Do you go much farther?"

"Abaat a mile, but I'd liefer yo' cem' up to th' haase wi' me. I dessay et 'ld do Johanna good. An' happen—ef I may tek' th' liberty o' askin' yo'—we could carry th' coffin in betwixt us."

The woman nodded.

"Ay, et's Michal's coffin, an' Michal's aar on'y child. Such a rare wench too hoo were afore hoo went away. But such were her will, an' there were no howdin' her in a' whōam. Yo' should hev seen her! Hoo were just as pink an' white as th' inside o' a peony-pod. An' et were a bad year wi' th' crops, though things bettered afterwards. . . . Hoo wouldna coom whōam till a month ago, an' then hoo were heavy wi' trouble."

He was obliged to go forward again, a track, diverging to the right, crossed a frozen brook and climbed, between stunted hedges, to the farmstead. He turned the horse safely and came back.

"I want to ask you something," the woman said anxiously. "When she came back to you—were you kind?"

"Kind, mam? Ay, that we were. Et were th' happiest an' yet th' saddest day o' aar lives. Prethee wheer else should hoo hev' gone, ef none to her own fowk? Hoo browt shame wi' her, but hoo were Johanna's dowter, an' my dowter, an' th' shame were all forgi'en."

The woman's eyes swam in scalding tears. She pressed her hands over her heart, then she quaked, remembering a casting from a door and a shouting of curses.

A dog barked softly. The wind was whirling the snowflakes in wreathed columns that passed in front of the house like veils of smoke. From the window of an upper room a clear streak of light stretched over the croft. The dog came bounding from a shippon and jumped up to Ascham's waist.

"Hush, Gyp, we munna hev a noise," he said, stooping to stroke its head. He "put up" the horse, leaving the stranger standing in

the open air, then he unlatched a door in that side of the house that abutted on the stable-yard, and beckoning her to help, silently drew the coffin from the wagon. They carried it through the kitchen, not without difficulty, for the oak planks were thick, and into the house-place, where they laid it on the lang-settle.

Ascham went to the foot of the stairs. "Johanna," he called gently. "I've gotten back, an' theer's a lady coom wi' me—hoo's bin helpin' me wi' et."

Mrs Ascham came down very slowly. She was a stout little woman, with clear blue eyes and brown wrinkled skin. The outline of a goitre showed through her black and white neckerchief. She held out a cold hand. "Et were good o' yo', mam," she said. "I were afeared my lad couldna manage et by himsen."

"Th' lady's an actress," Joe explained, "on th' way to Greet 'Ucklow. Hoo held th' coffin for me when Boxer slipped."

Johanna tried to unbutton the ragged silk cloak, but the stranger held it more tightly together.

"Lend me a lantern," she said, "and let me go on. If I am not there early to-morrow, my chance will be lost."

The old woman threw open the window. The snowfall had thickened, it came down so quickly that it seemed as if a white sheet hung outside.

"Yo' see et's impossible, mam," she said. "Yo' mun stay wi' us, an' hev soom o' Joe's supper. Th' way's hard to find i' broad dayleet, an' to-neet, e'en my lad, who's lived here all his life, wouldna dare to venture. Yo' dunna wish to freeze to dæath?"

The player smiled painfully. "It would not matter much," she replied, "but if you will have me stay I must do something. Is there any sewing—I am good with the needle?"

"No, mam, nothin'." I med shroud an' all mysen—I' fact they were th' very things I'd put by for when my own time cooms. Thank yo' very kindly, but all's doon."

Her husband drew her attention to the coffin. She examined it carefully, feeling the polish of the wood and the weight of the metal handles with divers murmurs of pleasure.

"Et's a beautiful thing," she remarked at last. "Ah, ef on'y aar Michal could see et, hoo'd be more nor satisfied!"

She took from the oven a huge bowl of hot porridge. Joe drank buttermilk with his share, but Johanna poured over the stranger's a jugful of rich cream. After supper, man and wife began to wrangle.

soberly concerning which should sit up in the death chamber Johanna had done so on the preceding night, but knowing that her husband was weary with the journey, she wished to take his turn

The actress broke in, during a pause, with—" Let me watch with your dead I will keep awake all night "

It was only with considerable difficulty that she prevailed Johanna told her that it had been the custom of the family for many generations " Michal's th' third I've watched," she said proudly " Theer were Joe's mother first, an' then my own lad as died thretty years ago But Joe an' I 'm growin' old an' worn aat, an' et'll be best for us to sleep, for to-morrow'll be a hard day What may your name be, mam ? "

" Call me Violetty , that is the name my parents gave me—a foolish name, like tinsel and sawdust "

Johanna opened the staircase door " Coom, then, Violetty," she said " This es th' way to Michal's chamber "

She led her up the broad, worm-eaten stairs to a great room, where stood a large four-post bedstead, hung with blue and white gingham She drew the curtains aside reverentially, and after removing a crocheted cloth, showed Violetty the face of a young girl, whose long glossy hair spread from the frilled nightcap in strands over the pillow Johanna peered into Violetty's hollow eyes before drawing down the counterpane and showing her the baby lying in its embroidered gown, like a doll, with its head resting between the mother's left breast and arm

Violetty's face worked , she turned aside

" Esna hoo a pretty yen ? " Johanna said " Twenty-one year, but et's just as ef hoo were ten or 'leven, an' hoo'd gone to sleep wi' her moppet " There was a low fire on the hearth She put on a dried peat and turned up the lamp

" Yo' wunna be scared, Violetty ? Hoo never did ony harm to onyone My owd man an' me'll sleep wi' aar door ajar—et's just across the landin' Ef yo' want owt, yo' need but call, for I warrant yo' we shanna sleep heavy to-neet "

Violetty sat quietly in the arm-chair, with her hands folded in her lap The old people went to bed soon she heard them undress, and for a while caught sounds of sobbing and whispering When they were asleep the silence of the place became too oppressive, and she walked to and fro, looking at the pictures that covered the walls Most of these were sombre-hued chap-paintings, done on thin glass :

the scene of Nelson's death hung above the funeral of Pitt, and a ruined castle surrounded by a moat beside a basket of impossible flowers. Over the mantel was a sampler, embroidered in faded silks—a prim cottage with a formal garden, on whose lawn was wrought a verse from the dialogue of "Death and the Lady."

Soon she drew her chair to the bedside and took away Michal's face-cloth. "If only I were dead instead of you, poor child," she said. "I have nobody and you had those who needed you."

She folded her hands again and sat gazing at the curves of the girl's body. A clock downstairs struck hour after hour, the muffled wind stroked the windows with snow. A feeling of content filled her now, it was like a dream—a dream of quietness and rest. Her life had been one long turmoil of excitement and of shame and of repentance. Michal had known only one short sorrow, hers had been many and protracted through years and years.

"There is no rest but death," she murmured.

Yet, all the time, her heart was craving for warmth and peace. She wished no longer for love—all that desire was burned out long ago—all that she wanted was a perfect calm.

The wind fell and a grey dawn broke. She heard the old couple stir in their bed, then fall asleep again. The nights of watching before and after Michal's death had taken away all their strength. She did not waken them, although she knew that unless she reached Great Hucklow before noon, all her chance of an engagement would be lost. But she felt no pang for herself, for were they not oblivious of all their trouble?

At last Johanna came, half-dressed, into the chamber. She leaned over Michal's uncovered face and kissed it twice.

"My dear deary," she whispered. "Thy nose were always cowed; et doesna seem as thou wert dead. An' i' a little while thou 'lt be put away fro' thy owd mother."

She beckoned Violetty to follow her down to the house-place.

"I mun ask yo'r pardon," she said, "but we slept on an' on. Why didna yo' waken us? I'm afeard yo'll be too late. Yo'd best stay till noon an' go wi' us to Highlow for the buryin', et's on th' way to Greet 'Ucklow. Theer'll be none theer—we wanted to put her away by aarsens. Besides, we hevna ony frien's."

Joe came downstairs soon and they breakfasted in silence, then Violetty, seeing that he wished to take the coffin upstairs, took hold of the end. Johanna followed, and between them they lifted Michal

and the child by the towels that were spread underneath, and spread the gumped cotton-wool evenly from head to foot

"We mun start at twelve," Joe said "Parson'll be waitin' at two Et'll be a white buryin' "

He raised the lid Violetty left them to say their last good-bye, and waited downstairs At noon the wagon started, with the two women sitting on either side of the coffin, whilst Joe rode on the shaft The father and mother had donned rusty black garments and big, half-mouldy gloves Violetty still wore her silk cloak, but Johanna had lent her an uncouth scuttle bonnet that almost concealed her haggard face The track was deep with snow, but at even distances the heads of roughly chiselled boundary stones kept them from straying on the moor Johanna, who held the actress's hand in hers, wept silently all the way When they reached the churchyard, which lies in a hollow at the end of a scattered hamlet, they found the clergyman waiting in the porch Two gravediggers came forward to carry the coffin, but the Aschams and Violetty lifted it themselves and laid it on the trestles in front of the altar None of the villagers were present they knew but little of the moor-folk, and it was much too cold to venture out of doors for such a trivial sight The clergyman's voice rang hollow amongst the stuccoed arches Joe and Johanna trembled as if ague-struck The grave had been newly dug Violetty saw on the mound, not yet covered by the falling snow, some little white bones and the shreds of a long-decayed coffin It was all that remained of the boy that Johanna had lost thirty years before The player buried her badly-shod feet in the snow and covered these relics hurriedly, so that they might not hurt the mother's eyes In a few minutes the service was over, and ere the gravediggers began to throw back the soft clayey soil, Violetty drew the old people away When Johanna had got into the wagon, Violetty leaned over the side and kissed her

"Good-bye," she said "God bless you for your comfort of me."

Johanna threw her arms around her neck

"I wunna let yo' go, Violetty, wench," she wailed. "Coom whōam wi' Joe an' me—coom an' stop wi' us for good Aar Michal 'ld hev wished et "

Joe put his hand over his eyes. "Ay, dunna leave us, Violetty. We'n got nob'dy left us." Violetty turned faint, everything reeled before her eyes. Then she flushed as if overcome by some great and unexpected happiness, and clambered into the wagon.

## THE GAFFER'S MASTERPIECE

R. MURRAY GILCHRIST

THE masterpiece was finished, and the gaffer sat in a rush-bottomed chair beside the table and gazed upon it with greater love in his eyes than had sparkled there when he had beheld his first-born. For his children had favoured their mother, who had been a managing woman—almost a shrew—and as they had grown to maturity he had become of less and less account. Long ago, even the youngest had passed into the world and all had forgotten him, save at Wakes' time and Christmas, when, out of their prosperity, they sent sparse gifts.

But the masterpiece was his own, his very own, the offspring of his body and his soul. He had stolen long hours from his rest for its creation, all the coppers that he had saved out of his week's earnings had been spent on materials, in fact, he had denied himself the luxury of twist so that everything might be of the best. On Saturday afternoons he had plodded to the market town to buy oddments of plain and gaily-coloured glass and bright paints and blocks of cork and dyed mosses.

Now that his first joy in its completion was over, he fell into a half-melancholy humour. The work was too good for him, he had owned nothing good in his life.

"I'm jealous as some one 'll want to tek' thee away," he said sadly, "tek' thee away an' put thee i' a peep-show. An' wheer shall I be wi'aat thee? Et's like enaa mony'll fancy thee, for theer's none been such a gran' mesterpiece doap i' th' Peak i' man's mem'ry!"

He rose, and opening a door in the press, took out a red and purple table-cloth, which he spread, as carefully as his trembling fingers would permit, over the masterpiece. Before it was covered, a knock sounded on the door and the latch was lifted and an elderly matron entered. She was the hostess of the "Forester's Arms" at Milton, and, having been a schoolmate of the gaffer's eldest daughter, she considered it her duty to concern herself occasionally in his doings.

He pushed forward an arm-chair. She drew off one of her loose

kid gloves, and passed her forefinger over the seat before trusting her black silk skirt to its tender mercies

"No offence, Mester Rowarth," she said, in a thin, high-pitched voice, "but men's ways arena as women's ways, an' I'm sore afeard o' dust wi' these ruchin's Haasoe'er theer isna ony"

"I try to keep et as clean as I can, but et's onpossible, wi' them purgatories on th' harstone, to keep ashes fro' flyin'," he remarked, pointing to the grate beneath the fire "Yo're lookin' well, Ruth"

"Ay, I'm well enaa, but th' pull up th' hill's a bit more nor I care for I've coom to see th' mesterpiece, fowk hev bin talkin' abaat et for God knows haa long, an' as yo've ne'er shown et to nob'dy, I mun ask yo' for owd time's sake"

The gaffer reddened "I didna want to exhibit et afore et were finished," he said apologetically "Et's took nigh on two years to mek, an' on'y last neet did I gi'e et th' last touch Et's set naa, an' I'm willin' for everybody as cares to see Would yo' mind liftin' th' cloth—very lightly—for I'm a bit uplifted, an' my fingers arena studdy"

She obeyed, and uncovered the masterpiece and gave a cry of pleasure, and a low hum such as a bee makes in a cowslip clump

"Et's just marvellous," she said "All Milton Dale an' Village true to natyure"

The gaffer stood proudly erect "I med et all mysen, Ruth, wench," he said "When I were a lad, I were good at workin' wi' coork, buldin' haases an' castles an' the like, an' the summer afore last I were that lonesome, I tuk to et onct more Every morn I went out at sunbreak an' studied th' spot an' set et daan i' my mind, so as at neet I could just work et aat Th' cottages es med' o' coork, wi' real rye-grass thack I've covered th' church top wi' lead, just as et es covered, an' put stained glass i' th' windows Them beech trees wes hard to do, but I reckon I've copied 'em well See, theer's th' cross again' th' big gate, an' every tomb as es o' consequence"

He touched a corner of the churchyard where an ancient yew thrust out uncouth boughs "An' theer's wheer I'm to be buried," he murmured "Mother and feyther were laid theer, but my wife rests wi' her own fowk at Great 'Ucklow Esna et fine?"

Ruth Pilkington nodded "I've just got an idea," she said. "Et's th' rent dinner to-morrow, why none bring et daan to th' inn an' show et to th' party? Et'll gi'e 'em a seet o' pleasure, an' let 'em know whatten an' owd man like yo' es capable o' doin'. Coom



early an' hev a bit o' summat wi' me, afore th' table's set Milton fowk 'll be praad o' such a thing "

He laughed feebly, like an ailing boy. None had thought him worthy of note before, he had been simply an old stonebreaker, akin to the beasts that had passed him on the road

" I'll coom, Ruth, wench, an' thank yo' kindly for askin' me."

" Yo're welcoom Now I mun be off Dunna be later nor twelve. Good e'en."

He sat up all night with his masterpiece. It is true that he undressed and moved towards the bed, but he could not find the heart to lie down, and he drew back immediately and went downstairs, and with a thin blanket wrapped round his knees, sat feasting his eyes on the model Soon after daybreak he donned his best clothes, which had only been used for funerals and were creased ineradicably and moth-eaten, and went to the overseer and begged a full day's holiday—the first he had wanted in thirty years Then he returned and sat again beside the table, not moving thence until the church clock struck eleven.

At the appointed time he reached the "Forester's Arms" and showed his work to a crowd of labourers who were assembled for the mid-day drinking The natives of Milton have strong enthusiasms, and their praise exhilarated the genius so much that he could scarcely touch the bountiful food that Ruth had provided

Soon afterwards a wild fit of terror came over him As he moved to the club-room, carrying the model on a large tray, a half-drunken tramp came from the bar-parlour He bore a pewter tankard, brimful of ale, which he was about to drink on the bench outside the porch

" Eh, mister ! " he exclaimed " What a gay little thing—all trees an' roofs an' windows an' chimneys I warrant et's rain-proof "

He raised the tankard and poured some froth on the church steeple The gaffer cowered over his masterpiece as a hen cowers over her chicks when the harrier is near

" I'm on'y an owd chap," he sobbed " Eighty an' one year——"

But Ruth Pilkington caught the fellow by the shoulders and pushed him to the door, and left him cursing there, for all the ale was spilt on the sanded floor

" Dunna fret, Mester Rowarth," she said. " Et'll wipe off—here's a bit o' soft rag Naa set et daan on th' sideboard Theer, et do look han'some ! "

The rent agent and the farmers entered, and before they sat to the table all examined the masterpiece. Most of them were untravelled men, and the model was beyond anything they had ever seen. The height of the gaffer's triumph was when the agent shook his hand and called him "a wonderful artist," and asked leave for his wife and daughters to call at the cottage.

Whilst they dined, he leaned over the masterpiece and wondered if anything could be improved. The sundial on the chancel wall seemed slightly awry, and he determined to raise one side a hair's-breadth. The agent invited him to take wine with him, and he sipped nervously from the thick-stemmed glass.

It was evening when he left the "Forester's Arms." The intoxication that had followed the unaccustomed drinking had passed, but he was strangely drowsy, and when he had passed the stile that opened to the heath on whose farther side his home lay, he covered Milton Dale and Village with his neckerchief, sat down and fell asleep.

And whilst he slept the tramp, bemused and still rankling with the contumely Mrs Pilkington had thrust upon him, reeled that way. He saw the foolish genius and prepared to kick him with his iron-shod toe, but recognising the grey head and withered cheeks, he refrained.

"Why, here's th' fellow as I met at th' pub, an' here's his dommed Noah's Ark! I'll pay him aat. Et were his faut as th' — laid her paws on me!"

He snatched off the cover, and laughed evilly as he saw the quant workmanship of the masterpiece.

"I set two barns afire last back-end," he muttered, "an' now I'll burn a whōal village."

He struck a match and lighted the yew in the corner of the graveyard. It blazed up instantly. He whistled, for he had the soul of Nero. Then he crept behind the hedge and watched.

The gaffer woke when the church fell in ruins. He whimpered at first, but soon was silent. When the last spark had died he rose and clasped his forehead and tottered homewards.

## ACCESSORY BEFORE THE FACT

**A**T the moorland cross-roads Martin stood examining the sign-post for several minutes in some bewilderment. The names on the four arms were not what he expected, distances were not given, and his map, he concluded with impatience, must be hopelessly out of date. Spreading it against the post, he stooped to study it more closely. The wind blew the corners flapping against his face. The small print was almost indecipherable in the fading light. It appeared, however—as well as he could make out—that two miles back he must have taken the wrong turning.

He remembered that turning. The path had looked inviting, he had hesitated a moment, then followed it, caught by the usual lure of walkers that it "might prove a short cut." The short-cut snare is old as human nature. For some minutes he studied the sign-post and the map alternately. Dusk was falling, and his knapsack had grown heavy. He could not make the two guides tally, however, and a feeling of uncertainty crept over his mind. He felt oddly baffled, frustrated. His thought grew thick. Decision was most difficult. "I'm muddled," he thought, "I must be tired," as at length he chose the most likely arm. "Sooner or later it will bring me to an inn, though not the one I intended." He accepted his walker's luck, and started briskly. The arm read "Over Litacy Hill" in small, fine letters that danced and shifted every time he looked at them, but the name was not discoverable on the map. It was, however, inviting like the short-cut. A similar impulse again directed his choice. Only this time it seemed more insistent, almost urgent.

And he became aware, then, of the exceeding loneliness of the country about him. The road for a hundred yards went straight, then curved like a white river running into space, the deep blue-green of heather lined the banks, spreading upwards through the twilight; and occasional small pines stood solitary here and there, all unexplained. The curious adjective, having made its appearance,

haunted him. So many things that afternoon were similarly unexplained: the short cut, the darkened map, the names on the sign-post, his own erratic impulses, and the growing strange confusion that crept upon his spirit. The entire countryside needed explanation, though perhaps "interpretation" was the truer word. Those little lonely trees had made him see it. Why had he lost his way so easily? Why did he suffer vague impressions to influence his directions? Why was he *here*—exactly here? And why did he go now "over Litacy Hill"?

Then, by a green field that shone like a thought of daylight amid the darkness of the moor, he saw a figure lying in the grass. It was a blot upon the landscape, a mere huddled patch of dirty rags, yet with a certain horrid picturesqueness too, and his mind—though his German was of the schoolroom order—at once picked out the German equivalents as against the English. *Lump* and *Lumpen* flashed across his brain most oddly. They seemed in that moment right, and so expressive, almost like onomatopœic words, if that were possible of sight. Neither "rags" nor "rascal" would have fitted what he saw. The adequate description was in German.

Here was a clue tossed up by the part of him that did not reason. But it seems he missed it. And the next minute the tramp rose to a sitting posture and asked the time of evening. In German he asked it. And Martin, answering without a second's hesitation, gave it, also in German, "*halb sieben*"—half-past six. The instinctive guess was accurate. A glance at his watch when he looked a moment later proved it. He heard the man say, with the covert insolence of tramps, "T'ank you, much opliged." For Martin had not shown his watch—another intuition subconsciously obeyed.

He quickened his pace along that lonely road, a curious jumble of thoughts and feelings surging through him. He had somehow known the question would come, and come in German. Yet it flustered and dismayed him. Another thing had also flustered and dismayed him. He had expected it in the same queer fashion. It was right. For when the ragged brown thing rose to ask the question, a part of it remained lying on the grass—another brown, dirty thing. There were two tramps. And he saw both faces clearly. Behind the untidy beards, and below the old slouch hats, he caught the look of unpleasant, clever faces that watched him closely while he passed. The eyes followed him. For a second he looked straight into those eyes, so

that he could not fail to know them. And he understood, quite horribly, that both faces were too sleek, refined, and cunning for those of ordinary tramps. The men were not really tramps at all. They were disguised.

"How covertly they watched me!" was his thought, as he hurried along the darkening road, aware in dead earnestness now of the loneliness and desolation of the moorland all about him.

Uneasy and distressed, he increased his pace. Midway in thinking what an unnecessarily clanking noise his nailed boots made upon the hard white road, there came upon him with a rush together the company of these things that haunted him as "unexplained." They brought a single definite message. That all this business was not really meant for him at all, and hence his confusion and bewilderment; that he had intruded into some one else's scenery, and was trespassing upon another's map of life. By some wrong *inner* turning he had interpolated his person into a group of foreign forces which operated in the little world of some one else. Unwittingly, somewhere, he had crossed the threshold, and now was fairly in—a trespasser, an eavesdropper, a Peeping Tom. He was listening, peeping, overhearing things he had no right to know, because they were intended for another. Like a ship at sea he was intercepting wireless messages he could not properly interpret, because his receiver was not accurately tuned to their reception. And more—these messages were warnings!

Then fear dropped upon him like the night. He was caught in a net of delicate, deep forces he could not manage, knowing neither their origin nor purpose. He had walked into some huge psychic trap elaborately planned and baited, yet calculated for another man than himself. Something had lured him in, something in the landscape, the time of day, his mood. Owing to some undiscovered weakness in himself he had been easily caught. His fear slipped easily into terror.

What happened next happened with such speed and concentration that it all seemed crammed into a moment. At once and in a heap it happened. It was quite inevitable. Down the white road to meet him a man came swaying from side to side in drunkenness quite obviously feigned—a tramp, and while Martin made room for him to pass, the lurch changed in a second to attack, and the fellow was upon him. The blow was sudden and terrific, yet even while it fell Martin was aware that behind him rushed a second man, who caught

his legs from under him and bore him with a thud and crash to the ground. Blows rained then, he saw a gleam of something shining, a sudden deadly nausea plunged him into utter weakness where resistance was impossible. Something of fire entered his throat, and from his mouth poured a thick sweet thing that choked him. The world sank far away into darkness . . . Yet through all the horror and confusion ran the trail of two clear thoughts—he realised that the first tramp had sneaked at a fast double through the heather and so come down to meet him, and that something heavy was torn from the fastenings that clipped it tight and close beneath his clothes against his body.

Abruptly then the darkness lifted, passed utterly away. He found himself peering into the map against the sign-post. The wind was flapping the corners against his cheek, and he was poring over names that now he saw quite clear. Upon the arms of the sign-post above were those he had expected to find, and the map recorded them quite faithfully. All was accurate again and as it should be. He read the name of the village he had meant to make—it was plainly visible in the dusk, two miles the distance given. Bewildered, shaken, unable to think of anything, he stuffed the map into his pocket unfolded, and hurried forward like a man who has just awakened from an awful dream that had compressed into a single second all the detailed misery of some prolonged, oppressive nightmare.

He broke into a steady trot that soon became a run, the perspiration poured from him, his legs felt weak, and his breath was difficult to manage. He was only conscious of the overpowering desire to get away as fast as possible from the sign-post at the cross-roads where the dreadful vision had flashed upon him. For Martin, accountant on a holiday, had never dreamed of any world of psychic possibilities. The entire thing was torture. It was worse than a "cooked" balance of the books that some conspiracy of clerks and directors proved at his innocent door. He raced as though the countryside ran crying at his heels. And always still ran with him the incredible conviction that none of this was really meant for himself at all. He had overheard the secrets of another. He had taken the warning for another unto himself, and so altered its direction. He had thereby prevented its right delivery. It all shocked him beyond words. It dislocated the machinery of his just and accurate soul. The warning was intended for another, who could not—would not—now receive it.

The physical exertion, however, brought at length a more comfortable reaction and some measure of composure. With the lights in sight, he slowed down and entered the village at a reasonable pace. The inn was reached, a bedroom inspected and engaged, and supper ordered with the solid comfort of a large Bass to satisfy an unholy thirst and complete the restoration of balance. The unusual sensations largely passed away, and the odd feeling that anything in his simple, wholesome world required explanation was no longer present. Still with a vague uneasiness about him, though actual fear quite gone, he went into the bar to smoke an after-supper pipe and chat with the natives, as his pleasure was upon a holiday, and so saw two men leaning upon the counter at the far end with their backs towards him. He saw their faces instantly in the glass, and the pipe nearly slipped from between his teeth. Clean-shaven, sleek, clever faces—and he caught a word or two as they talked over their drinks—German words. Well dressed they were, both men, with nothing about them calling for particular attention, they might have been two tourists holiday-making like himself in tweeds and walking-boots. And they presently paid for their drinks and went out. He never saw them face to face at all, but the sweat broke out afresh all over him, a feverish rush of heat and ice together ran about his body, beyond question he recognised the two tramps, this time not disguised—not yet disguised.

He remained in his corner without moving, puffing violently at an extinguished pipe, gripped helplessly by the return of that first vile terror. It came again to him with an absolute clarity of certainty that it was not with himself they had to do, these men, and, further, that he had no right in the world to interfere. He had no *locus standi* at all, it would be immoral . . . even if the opportunity came. And the opportunity, he felt, would come. He had been an eavesdropper, and had come upon private information of a secret kind that he had no right to make use of, even that good might come—even to save life. He sat on in his corner, terrified and silent, waiting for the thing that should happen next.

But night came without explanation. Nothing happened. He slept soundly. There was no other guest at the inn but an elderly man, apparently a tourist like himself. He wore gold-rimmed glasses, and in the morning Martin overheard him asking the landlord what direction he should take for Litacy Hill. His teeth began then to

chatter and a weakness came into his knees " You turn to the left at the cross-roads," Martin broke in before the landlord could reply ; " you'll see the sign-post about two miles from here, and after that it's a matter of four miles more " How in the world did he know, flashed horribly through him " I'm going that way myself," he was saying next , " I'll go with you for a bit—if you don't mind ! " The words came out impulsively and ill-considered , of their own accord they came For his own direction was exactly opposite *He did not want the man to go alone* The stranger, however, easily evaded his offer of companionship He thanked him with the remark that he was starting later in the day . They were standing, all three, beside the horse-trough, in front of the inn, when at that very moment a tramp, slouching along the road, looked up and asked the time of day And it was the man with the gold-rimmed glasses who told him

" T'ank you , much obliged," the tramp replied, passing on with his slow, slouching gait, while the landlord, a talkative fellow, proceeded to remark upon the number of Germans that lived in England and were ready to swell the Teutonic invasion which *he*, for his part, deemed imminent

But Martin heard it not Before he had gone a mile upon his way he went into the woods to fight his conscience all alone His feebleness, his cowardice, were surely criminal Real anguish tortured him A dozen times he decided to go back upon his steps, and a dozen times the singular authority that whispered he had no right to interfere prevented him How could he act upon knowledge gained by eavesdropping ? How interfere in the private business of another's hidden life merely because he had overheard, as at the telephone, its secret dangers ? Some inner confusion prevented straight thinking altogether The stranger would merely think him mad He had no " fact " to go upon He smothered a hundred impulses . and finally went on his way with a shaking, troubled heart

The last two days of his holiday were ruined by doubts and questions and alarms—all justified later when he read of the murder of a tourist upon Litacy Hill. The man wore gold-rimmed glasses, and carried in a belt about his person a large sum of money His throat was cut And the police were hard upon the trail of a mysterious pair of tramps, said to be—Germans



HUBERT CRACKANTHORPE

1870-1896

## SAINT-PÉ

### I

**R**EGULARLY, three times a week, every Tuesday, Thursday, and Saturday, he and his dog came to beg

He was very tall and very gaunt, and his clothes were all plastered with quaint patches, and ravelled along the hems. But he was always scrupulously clean. His flowing grey beard was silky and well combed, and the red skin of his hands glistened, as with much polishing. And his sabots, which were many sizes too large, were stuffed with clean straw, and he always left them on the doorstep, and came into the house bare-footed.

He called himself Saint-Pé—why, I could never discover—for one day he admitted to me that he had been baptized altogether differently. He and the curé, and the officier de santé and I represented the classes at Sallespisse, but Saint-Pé alone *vivait en rentier*. For from sunrise to sunset he was idle, he had not done a day's work since the war. He lived in a ramshackle, one-roomed, mud-floored building, from one corner of which at night, through the broken tiles, he could see and watch the stars. But the house was his own property, and every Tuesday, Thursday, and Saturday morning he shuffled out of it in his clumsy sabots to beg around the neighborhood.

Saint-Pé's dog was named Pluton. Once upon a time he had been of the race of St. Hubert, and Saint-Pé, when he learned my name, hastened to recommend the animal to my special attention. Whatever Pluton had been once in the distant days of his youth, he was now but a wriggling collection of bones encased in a worn-out skin. I never knew him venture to carry his tail otherwise than tight under his belly, and whenever I met him alone, or skulking along behind his master, he never failed to greet me with an interminable, complicated series of grovelling, Japanese-like obeisances.

And, as I have said, the two came to the house every Tuesday, Thursday, and Saturday, and while Pluton sneaked off to rummage

obsequiously for refuse in the scullery, Saint-Pé mumbled out the whole lamentation of his woes, as lugubriously, as elaborately, as if he were a complete stranger. Four sous per visit was my allowance to Saint-Pé, and when he had pocketed them somewhere amid those mysterious patches of his coat, he would clump away down the drive, noisily praying to the Virgin for the future repose of my soul.

Eudore and Saint-Pé were neighbours, and Eudore hated Saint-Pé after his obstinate, uncompromising fashion, and never altogether forgave me for encouraging the old impostor. "C'est de la canaille," he would repeat sullenly, when, to tease him, I related Saint-Pé's doings, "c'est comme des *lagas*, ça vit sur les gens."

But if, in Eudore's opinion, Saint-Pé was a worthless parasite, Pluton was a cursed thief. One night Eudore had missed five of his young ducks, and he had shouted across the hedge to Saint-Pé that the very next time he would shoot that cur of his dead on the spot. At which threat Saint-Pé shrugged his bony shoulders, and Pluton retreated inside the house, grovelling more obsequiously than ever.

"Il est malin," Saint-Pé confided to me the next morning. "Il trouve ce qu'il trouve—et ça ne paraît point—regardez." And, indeed, despite the five young ducks, Pluton looked more starved than before.

## II

One Tuesday, about the time of the sowing of the maize, Saint-Pé never appeared, and on the Thursday I missed him again. So at sunset, when I had done my work, I strolled up to his house, wondering what could have happened to him. The door was open, a half-cut loaf of maize bread stood on the table, but there was no sign of Saint-Pé. Then I heard the scraping of a spade. Saint-Pé was behind the house, digging.

He put down his spade and shuffled up to me. And he began to repeat the whole of his elaborate lamentation—he was miserable, he was poor; life was hard, he had no one to look after him, he appealed to good, charitable folks to help him in his old age, "and now," he concluded, "my dog, the old Pluton, the only thing that the good God had left to me, my dog, my dog, he is dead." He led me behind his house, and lifting his coat, all plastered with patches, uncovered poor Pluton's corpse with his tail stretched behind him, stark and straight, as I had never seen it while he lived. "Et main-

tenant," said Saint-Pé proudly, pointing to the half-dug grave, "et maintenant, monsieur, je travaille " And once more, from the very beginning, he went through his lamentation, concluding with the appeal to the good, charitable folks to help him

I asked him how it had happened He jerked his head towards the hedge, beyond which stood Eudore's house " It was this morning, at daybreak A shot—paf ! " (And he imitated, dramatically, the gesture of shooting ) " And it was only one that he had taken—just one miserable little duck Only one I assure you, monsieur, he hadn't had time to take more than one " And for the third time he repeated his lamentation

Eudore came out of his house, and, seeing us, strolled up to the hedge and looked over Saint-Pé went back to his digging Eudore stood silent for several minutes , presently he said, half to himself—

" Ça faisait pitié de voir une bête affamée comme ça "

Then, turning to Saint-Pé, he called in patois—

" Stop a minute , I will dig for you "

He pushed his way through a gap in the hedge, and taking the spade, dug out the grave And when he had finished, Saint-Pé lifted the stiff carcass tenderly and placed it inside , then shovelled the earth over it with his clumsy sabots.

HALLIWELL SUTCLIFFE

B 1870

## A MIDNIGHT BRIDAL

**M**AURICE ST QUAIN rode out from Edinburgh town—rode as a man rides on whom the world's cares sit lightly Seen by the light of the moon, the stars, the oil lamps that creaked fretfully the length of the Canongate, he showed a square, big-headed, well-knit fellow, and his clothes were London-made

"Damme, what a night!" he muttered, as the keen wind blew through him and about "For an east wind and a raw air, commend me to this same capital of Scotland"

He rode awhile in silence, then talked again to the slim-footed beast he rode, the while he patted her sleek mane

"Yet the women are softer than their climate, eh, dear lass?" he muttered to the mare "And if I love not Mistress Lang as well as I've loved others—well, she must serve to pass the time till I get marching orders from the sour old lord, my uncle"

The moon came forth more boldly, and showed the man's face in a clearer light Deep lines there were about the eyes and mouth—lines chiselled by a life of pleasure, yet promising a brave spirit under all Perhaps the moon knew—the moon, whose woman's curiosity has taught her such queer, prying habits at times when all true ladies are abed—perhaps the moon knew what there was of good and bad in Maurice St Quain He had loved lightly, and left sad hearts behind him, he had fought one duel at least in the course of each amour, and love and fight between them had marked him, yet withal he held a certain reverence for women in the abstract, which no woman in the flesh had yet found power to wake

And now he was journeying, under the light of this same moon that knew him, toward the village far away yonder at the foot of the low hills, where one he liked, and loved not, waited for him

He rode far out from the smoky lamps of the town, and was nearing a small and lonesome loch that lay on the left-hand of his road, when a figure, bent and cloaked, stepped out into the moonlit road. A hand was laid upon his bridle, and at the moment a wild blast of

wind swept back the cloak, revealing a woman's face—old, worn and wrinkled beyond belief. For a full moment she stood there, saying no word, but looking at his face, his wearing-gear, the appointments of his horse. Nor did he break the silence, this figure, coming from the dreary night, seemed rather a spirit's than a woman's, and time and place alike combined to overlay the man's undoubted courage.

"Aye, the Lord is guid," murmured the old woman at last. "Didna I pray for sic a callant to come riding by the loch-side?"

"What is it, mother?" asked St. Quain, finding his voice again.

"I sent up many a prayer, an' ye have come."

St. Quain laughed—laughed as the Scots themselves are wont to do, with hardship and a sound of dryness in the throat. "'Tis the first time, to my knowledge, that I have come in answer to any woman's prayer, unless she chanced to be young and buxom. Come, mother, can I serve you? And if so, how? For time is pressing with me."

"An' isna time pressing wi' the bonnie bairn—the bit lassie I nursed on my ain knee? There's a tryst for ye the nicht, an' ye'll no fail to keep it."

"A tryst? Why, yes, but how should you know of it?"

Again she eyed him for awhile in silence, then, "The hour is no just one for yon kind o' love," said she. "There's Death will be the groomsmen if ye winna come wi' me."

Maurice St. Quain began to shiver, what with the wind that chilled his body and this queer speech that chilled his soul.

"What would you?" he said.

"Ye maun let me hold your bridle an' rade ye to the muckle house above the loch"—pointing a shrivelled finger, as she spoke, across the moonlit lake. "Ye maun ask naething as to aething, for there's little time, I'm thinking, if the lassie's to be kept from out a bridal shroud."

Slowly it was borne in upon him that there was a life to be saved—a young girl's life. Not all the night wind could frost his chivalry, not all the love trysts in the world could turn him from a clear errand of mercy such as this.

"I'll go with you," he said.

The woman clutched his bridle, muttered a blessing, so it seemed, and strode off along a grass-grown bridle-track with the step of one who had fewer years to carry. Down by the loch-side they went,

with a mist of spray in their faces ; up the further side of the steep they journeyed, and in at a rude gateway The moon shone fair upon a rugged, loose-built house, and from an upper chamber came the light of many candles

"Get ye doon," murmured the old nurse "I'll lead your beastie to the stable, if ye'll bide a wee "

He waited, as if under orders from his superior officer ; and the wind shrilled about the walls , and the waters of the loch went lapping, lapping up the reedy beach

"Come wi' me," the same voice murmured at his ear, while yet he was in the midst of wonder and of vague affright

He followed her across the courtyard, and up a flight of steps, and into a great hall And now, for the first time, he ventured to draw breath Without, there was the wind, the moonlight and the witchery , within, all seemed to have a usual air about it—the air of a house whose master is well-found in this world's goods A manservant was putting logs upon the great fire on the hearth-place , a hound, long-nosed, long-bodied, dozed beside the blaze , the very nurse herself, who had shown as some weird creature of the night, grew to the likeness of a woman as she doffed her cloak She crossed to the board that held the middle of the floor, and poured a goblet of wine, and brought it to the strangely bidden guest

"And, ay, she's bonnie," she murmured, with a sort of hard encouragement. "Ye needna look as if 'twere pain an' grief to save the lassie's life "

St Quain gulped down his wine, and felt the red of it go tingling through him The old nurse watched him curiously, and something like a smile was on her face as she noted once again the big comeliness, the air of consequence, that hung about this Englishman

"My lady waits ye, and the meenister," she said

He could make nothing of it Who was my lady ? And the minister—surely he would not be there unless the maid were on the point of death , and if she were so near the end, what service could a stranger render her ? The house, moreover, did not seem like one that entertained old Death as visitor , for serving-men, with careless faces, free from any trace of woe, were moving in and out of the grim hall, making ready against supper-time Again, what did it mean, he asked himself.

"Perchance there is a supper-party," he said, with sudden inspiration, "and a guest has failed you?"

The old nurse was plucking at his sleeve impatiently. "There'll be one guest o' the twa come into hall the nicht," she muttered. "One o' the twa—and the other's death, I'm telling ye."

"Oh, ay. You would be thirteen at the table, and you sought one more to break the ill-luck?"

"I ken little o' your English haverings. Thirteen? Why for no should thirteen sit down to meat? Come ye wi' me, laddie, for we're ower near the strike o' twelve to stand here talking o' matters that only a Scot may ken."

He followed her, with quickened breath. They mounted a broad stair of oak, and crossed a landing hung round about with trophies of the chase and battle-field. The old nurse pointed to a rusty pike, and chuckled grimly.

"That came fro' Bannockburn," she said, "and now it seems we have to beg fro' an English callant what once we took. I could weel wish ye'd been cradled north o' the Border, but 'tis as God wills."

St Quain smiled quietly at the race-hatred which slumbered still—not knowing that this same race-hatred was to wear a graver aspect for him soon.

The nurse flung open a door on the right-hand, and St Quain found himself in a well-lighted parlour. A spinet stood at the far end, and round the hearth was grouped a company of three. The first, a lean greybeard, habited in black, was talking to a stately matron, the third member of the group sat on the other side the hearth, and twined and untwined her white fingers restlessly.

All the gallantry in Maurice St Quain, all the tenderness and passion, came headlong to the front as he looked at that third figure. There was witchery in the pale face, he had known no other like her, though he had wandered through many countries with an eye wide open for such matters. The old nurse could have taught him words with which to clothe his thoughts, had she been minded—soft, northern words that Southrons have no knowledge of. But the nurse was glancing at him eagerly, and from her look it seemed that life and death hung in the balance.

As for St Quain, he stood and bowed above his trim, three-cornered hat, and felt the eeriness steal back upon him. Without, the wind howled unwearied, and light spits of rain came tapping like so many

fingers at the windows, within, he saw four people—strangers until now—all eyeing him with a regard half eager, half mistrustful.

"My prayer went bonnily, my lady," the old nurse said. "I met him on the road doon by the loch, an', tho' he's Southron, he's no that ill to look at"

My lady checked her "Your errand here must seem a strange one, sir," she said "It will seem stranger when you hear the nature of it"

He scarcely heard her, for his glance was on the lassie seated at the far side of the hearth, and he was thinking how gladly he would have journeyed half through England to win a sight of her And she, for her part, was regarding him with a look he could not understand, a warm colour, as of pleasure, had risen to her face, and it seemed not possible that she should be the victim of a fatal malady

"Your name, sir, is——?" went on my lady

"St Quain, at your service"

"A gentleman of quality, if I mistake not?"

"Nephew to Lord St Quain," he answered drily This cool, quiet questioning, as if he were a malefactor in the dock, was little to his taste, better, he thought, the wildness and glamour of the scene without

"Then, sir, I must ask your patience while I tell you how it comes that we entertain a guest so unexpected—and so welcome," she added, with a cold politeness that was almost insolence

She motioned him to be seated, but he would not He felt a strange repulsion from this lady who craved a favour, and received it, as if the world were made to do her service And yet, as he looked at the lassie once again—and found her eyes still resting on him, with their pitiful, half-pleading look—he could not nurse his anger.

"We are the Lockerbies of Loch," went on my lady, with the air of one who has said enough to compel both homage and surprise

St Quain, indeed, felt no little surprise, for the Lockerbies were famed for their poverty, their pride, and the beauty of their women. He understood now my lady's bearing, and resented it not at all, for no Lockerbie that he had heard or read of had thought to find his equal.

"I am honoured by any summons from Lady Lockerbie," he said.

My lady glanced shrewdly at him, it seemed she liked his quick address, and liked the fashion of his face and figure.



"There is a curse upon our house," she went on, with a note of fear beneath her coldness

"I have heard of it"

"Who has not? You know the danger, then, that overhangs our daughters?"

In a flash he saw the meaning of it all, and his first sense was one of wonder that an old superstition could die so hard. Was it not the year of grace 1750? And could it be that four folk gathered here together—one a minister, the others women of pluck and sense—were following this Jack-o'-Lanthorn legend with implicit faith? He caught the minister's eye, and the man of prayer began to shift his feet uneasily

"Such matters are idle, they are snares of Belial," he said; "yet the curse has never failed through three long centuries"

"Legend and history bear out your tale, sir," said St. Quain, and he paused in doubt

The pause was broken by a sudden, eager cry from the lassie who was the head and fount of all this trouble

"It is idle, sir," she said, with a swift glance at St. Quain. "Scots lassies do not die of legends, and so I tell them"

Yet under her gaiety, too, there was a note of fear. And under her gaiety, likewise, there was a something that told St. Quain the truth he hungered for. Mystery or no—hasty wedlock or no—it was plain that in her denial of the need there was a confession that he had already found some place in her regard

My lady came and laid a hand on the girl's shoulder, and all her pride was gone. "Janet," she said tenderly, "I have but you, and the curse is stronger than we are"

"But, mother, you are asking"—the colour swept across her face and left it pale again—"you are asking this gentleman to—to give his life for mine"

"What folly, child!"

"He will be bound to me—to me, whom he did not know a half-hour since. What will his life be worth to him afterwards?"

It was St. Quain who spoke now. "My life will be worth little to me if I lose you," he said

And the old nurse, standing in the shadows, rubbed her lean hands together. Southron or no, he spoke as women like to hear a lover speak.

There was an awkward silence, broken on the sudden by a deep *whirr* from the eight-day clock that stood beside the hearth. All turned to the dial-face, all listened while the ten strokes were struck, sonorous and deliberate. The girl herself began to tremble, for the legends of her race were strong on her, and two more hours might see her wedded to a grimmer bridegroom than St Quain.

"Haste ye, haste ye," crooned the old nurse. "It's gey ill to play wi' time as ye are doing."

The minister was grey of face, and now and then he muttered a prayer. And then there came a wailing from without, as if in answer to the deep voice of the clock—a wailing that drifted round the courtyard, and down the slope, and across the lapping waters of the loch.

"Cannot ye hear?" the old nurse cried.

"It is the wind—the wind, woman," said the minister fretfully.

"Oh, an' it's the wind, say ye? Well, I've heard it twice in a long life, an' I dinna like its voice." She looked at her young mistress. "For the love of heaven, dearie, save yoursel'," she said.

St Quain could scarce remember afterwards what chanced. He was aware of wind and rain against the window panes, of the loud ticking of the clock, of Janet's hand in his. He recalled vaguely that the minister had talked and prayed above them, and that his heart beat high as he named the girl his wife. But what he did remember in after years was the great sob of relief that came from Lady Lockerbie, it was plain that she looked on her daughter as one returned almost from the grave. Nor was this faith in an old legend so strange as at another hour and place it might have shown. This house by the lone loch was one that harboured ghosts, if ever a house did, and legends might well find lodging-place in every cranny of the walls.

When next he felt himself awake, Lady Lockerbie's voice was in his ears, and the pride that was almost insult had come back to it.

"We owe you more of explanation than we have given," she said, taking him aside. "Why, you will ask, knowing as we did the danger that hung over us, why did we leave all to the chance of the last moment?"

St Quain's air was full of quiet gaiety. "I ask for no explanation," he said. "I have won your daughter, and I count it the happiest evening of my life."

"Yet you will wonder by and by, and I must tell you. My

daughter was to have been married this morning to an old lover of hers ; everything was in readiness, and he—he was killed in a duel yesternight The news reached us at daybreak, and we have spent the day in fear so horrible that you could not credit it "

" There was a Fate in it," said St Quain—and, indeed, he felt as much , " and if I bring your daughter one-half the happiness I have won——"

" Our pride must suffer," put in my lady , " the Lockerbies have never yet needed to go abroad in search of an alliance—to seek it in the public road I fear, sir, your thoughts of us must be something of the strangest "

He bit his lip, then smothered down his own sense of pride " My thoughts toward you are of gratitude," he said—" and surely the St Quains are not of such indifferent blood——"

" In England the name is a good one, so I believe Yet our pride is wounded, sir, to have hurried you into a bridal in this fashion —And yet, again, we owe you gratitude Pray lead my daughter to the hall , there is supper waiting for us there "

Plain as was my lady's attitude—of gratitude all chilled by Scottish pride—her daughter's was different altogether Half-shy she was, not knowing how this trim-built gallant felt toward her ; but the pressur of her hand upon his arm was friendly, warm, confiding almost

" I shall love wild nights henceforward," he whispered in her ear " The wind and the rain have brought me—you ! "

It seemed that she had suffered from deep feeling long repressed , for on the sudden she looked him in the face, and let a dangerous light come into her grey eyes " I was to have married Bruce of Muirtown," she murmured, " and, oh, how I hated him. Better have died, I think, than go through life with him "

St Quain laughed low and happily. " And I ? " he said " Am I a better mate than Death ? "

" You saved my life, and you saved me from Bruce of Muirtown Am I like to forget such services ? "

They were in the hall by this time, and the minister was bowing Lady Lockerbie into her chair Very handsome my lady looked, and chill as the night wind that raved about the house , and she glanced at St Quain with a curious distaste Not that her coldness troubled him , the girl beside him was his wife, and he had known no other like her in the world. This supper-party might, indeed, have dashed

a bridegroom's spirits, had he been made of softer stuff, the wildness of the night, the urgency, the curse that seemed to be on the wind's lips as it hurried by—these were no usual forerunners of a bridal trip. Yet St Quain lifted his glass and drank a measure—pledging his lady with his eyes—as gaily as if all were orderly and well-omened.

"Why should such a destiny as ours hang over us?" the girl murmured. The fear, suspense and shame that she had undergone lay heavy still upon her, and she shivered as she spoke.

"The legend says, if I remember rightly, it was because some long-dead Lockerbie did bitter wrong to his neighbour's daughter."

"You know our story well, it seems."

"I have lived much in Scotland, and its tales are dear to me."

"Yet where is the justice of it? All this was centuries ago, and I——"

"And you have pride and all the other legacies to bear. He did grievous wrong to this girl, did he not—your ancestor? And she drowned herself upon her eighteenth birthday, and the mother came to him as he sat in the hall, and cursed him, saying that no maid of his should pass her eighteenth year."

She nodded gravely, and turned to shudder at the wind-beats that rocked the very walls. "And we have escaped—all but two of our race—by making maidens wives before they reached the fatal age."

"And I have reason only to bless the old-time story. Why, Scotland never saw bride so bonnie as mine, and one day—when, Janet?—she may learn to love me."

"I am to be taught—and the master, so it seems, is clever at his work," she murmured.

Lady Lockerbie frowned at them from her seat at the table-head. "Mr St Quain," she said, in measured tones, "I must offer you a lodging for the night. To-morrow, if it suits you, I should wish you to ride into England, to warn your friends of this alliance, and to make all preparations for a second marriage in due form."

St Quain laughed outright. The wine and the witchery and the sweetness of it all had got into his blood. "I ask for no second marriage," he said. "Happiness is happiness—and I have found it here to-night."

The minister looked soberly over his glass of wine. He was oppressed by the irregularity of it all, and by the bridegroom's levity. And Lady Lockerbie looked coldly at her son-in-law.

"I think," she said, "that happiness has very little to do with this matter. We are an old race, sir—indeed, you come of an old race yourself, so far as England goes—and I should wish to treat with your father as to settlements, and——"

St Quain felt a dull pain at his heart. He had loved his father well. "My father died," he said gravely, "four years ago—at Culloden."

Had he unsheathed his sword at the supper-table, the effect of this quiet speech could not have been more dire.

"Died at Culloden?" echoed Lady Lockerie, clutching the table with restless fingers. "On which side, sir, did he fight?"

"Why, for the King?"

"The King? Which King—our own Stuart, or the Usurper?"

"For King George. We have been loyal subjects always."

The minister began to mutter vaguely to himself. He knew not what might follow this rash confession of St Quain's.

"*Loyalty*, sir?" cried my lady, in a voice of bitter scorn. "We Lockeries do not play with words, as you would seem to do. I lost my husband at Culloden—and your father fought against him, so it seems."

"I can but regret," said St Quain slowly. "Yet it would be a poor thing, surely, for the children to cherish enmity because their fathers were brave men and fought for different causes."

"It takes all rights from you, so far as my daughter is concerned."

St Quain felt the girl on his right hand move closer to him, with a sort of instinctive denial.

"You have saved her life, sir," went on my lady, in the same cold, even tones; "you have done us a service, and we thank you for it—but you must never have speech or sight of her again."

It was St Quain's turn now. He rose to his full height, and Janet, looking up at him, could not keep back that glow of pride and tenderness which had swept over her at his first coming.

"Lady Lockerie," he said, "I have won my wife, and I shall take her home with me as soon as she has made her preparations. I care little for King George or Charlie Stuart—but I love *her* as I never thought that a man could love a woman."

"You do not understand," put in my lady. "Culloden was worse than Flodden even, the memory of it is with us day and night. We *hate* you English folk."

"Janet," said St Quain, and he laughed as he turned to the girl—"Janet, what say you? Granted I was unhappy in my English birth—and, faith, I had little choice about the matter!—are you willing to fare out with me and trust to my sword-arm and my honour?"

The Lockerbie pride took diverse forms, and my lady had no exclusive share in it. The girl rose, too, and put a warm hand into her lover's. "I will go with you," she said, "and—I shall go fearlessly."

Again there was a troubled silence, broken this time by a loud rattling at the door.

"The wind, my lady," murmured the grey minister, who seemed more uneasy than the rest.

"Open, open!" came a shout from the other side of the door.

"God help us, 'tis Bruce's voice!" murmured Lady Lockerbie. "Bruce—and we thought him dead!"

"The nicht is full of the wee bit ghosties," murmured the old nurse, standing behind her lady's chair. "He, too, I'm thinking, couldna rest quiet i' his quiet bed, while the English-born stepped into his dead shoon."

Again the girl moved nearer to St Quain, and slipped her hand into his own under cover of the board. "It is Bruce's voice," she whispered. "Bruce of Muirtown, and I fear him so!"

"Fear him, with me beside you?"

"Yes, for he has loved me since I was a child. Oh, he's not bad, not bad at all! But he is fierce, and I do not love him, and—and I would this trouble had not been brought on you."

St Quain's heart leaped high. Her last thought was for him, despite her own dread of Bruce, the pressure of her hand was sure and wifely.

"See, child," he whispered, "do you love me? May I act as if you were my wife in truth as well as in the letter?"

The pressure of her hand alone replied, and then the sound of knocking at the door grew louder, unmistakable. The old nurse went to open, and let in a storm of wind and rain that half-blinded those within. And when at last their eyes grew clearer, they saw a big fellow, with blue eyes and rain-wet hair of yellow, standing, like a storm-sprite, his eyes fixed upon my lady's daughter.

"I feared to be too late," he cried "It wants but an hour to midnight, and——"

He paused, and clutched his heart as if in pain And now they noticed that his left arm was bandaged, and that a kerchief was wrapped about his brow

"They—they said that you were dead," my lady stammered "Say, Bruce of Muirtown, is't your ghost?"

"My ghost?" he echoed "Nay, but 'twas like to be. I was wounded, and fell into a sort of trance through loss of blood, and when I woke there was a voice that called to me—your voice, Janet—and I rode out through the storm"

A sudden pity fell upon them His eyes dwelt hungrily upon the girl, and it was clear that only love of her had given him strength to ride so far

"She is married already," whispered my lady.

He looked more like a fiend than any fleshly man, as he paused to understand his misery "Married? To whom?" he thundered

St Quain bowed quietly "To me, sir, an hour ago," he said

Bruce of Muirtown began to mutter like a man deranged; then asked the minister if this were true

"They are fast as the Kirk can make them," said the grey man of peace

Again there was a silence, then Bruce laughed harshly, and lifted a glass from the table, and flung the contents full in his rival's face

"We'll fight upon it, sir, and she shall be a widow before to-morrow breaks"

St Quain felt a rush of shame come over him—shame, not for his wine-stained face, but for the weakness of this man who had challenged him to combat

"I regret, sir," he stammered, wiping his cheeks and brow, "that you are only strong enough to offer insult—not to atone for it"

Bruce of Muirtown turned his hungry eyes away—turned them from the lass he worshipped, and let them rest upon St Quain.

"I am recovered," he said, with a heaviness of voice that belied him, "I will fight you in the meadows by the loch to-night"

"Nay, for I refuse," St. Quain answered quietly. "I do not fight with wounded men"

Janet, for her part, wondered at his self-command, for already

she had grown to love him, and no love-ridden woman doubts her lover's courage. But Lady Lockerbie was of different mould, and her voice was cold as the raving wind without when she turned toward St Quain.

"In Scotland, sir, *men* answer insult with the sword," she said.

St Quain drew back, with something near to horror. For the first time he understood this woman—understood the depth of her prejudice and her pride. She had been glad to save her daughter's life, she was more glad to think that Bruce of Muirtown had returned to cut the bridal-knot with one sharp stroke of his sword.

And yet the man was weak through loss of blood and long riding under rough skies. How could he fight with him?

"'Tis not the first time we have daunted Englishmen," said Bruce, with a mocking laugh. "See how he pales beneath the wine-stains—and all because he sees a hand go down toward a sword-hilt."

St Quain was mortal, though brave and tender-hearted. "You fasten a quarrel on me," he said. "Well and good—but these ladies should know nothing of it."

"Ay, ay, they should, seeing that one of them is my promised wife. And, gad, sir," he added, in a white heat of passion, "if you dally further, I'll thrash you in their presence."

St Quain could do no more. He lifted his wife's hand and kissed it, he bowed, as a courtier might have done, to Lady Lockerbie.

"I am ready, sir, and the moon is full to-night," he said.

The black-robed minister stepped forward. "Gentlemen, gentlemen——" he began.

"It is too late," said Bruce of Muirtown.

"Too late," echoed St Quain, turning, as he left the hall, to find his wife's eyes fixed on his, with a tenderness in them beyond belief.

"Yet think, sir," said the minister, his hand on St Quain's arm. "A duel is at all times a godless enterprise, but when your adversary is sick——"

"True," said St Quain quietly. "In England we do not fight with such as Mr Bruce here, but it seems that in Scotland the matter shows far otherwise."

"In Scotland men fight for a right cause, whether they be sick or well," said Lady Lockerbie sharply.

St Quain bowed low to her. He was beginning to understand how pride—Scottish pride—may oust all womanhood.



" You will fight ? " said Bruce of Muirtown eagerly, as he gulped down a measure of red wine

" You leave me no option, sir," answered St Quain

Together they went out into the windy night, he and the man whose left arm carried bandages ; and even now, amid the stress of weather and of feeling, he wondered that the prospect of sword-play could be so bracing to a wounded man

" There will be none to watch us," muttered Bruce " The minister is pledged to peace, and we can scarcely ask the women-folk to act as seconds "

" Where is the ground ? " said St Quain shortly

" Rather, what is your weapon ? You are the challenged party "

" Swords," said the other, after a scarce perceptible pause

The clouds had left the moon by this time, and the wind was dying into fitful moans and gusts as they went out into the grim courtyard and forward to the meadow-lands beyond From time to time Bruce halted in his walk, but always recovered and went forward with an air so hard and desperate that St Quain felt chilled and awestruck He could love and hate, this thwarted lover, and spared himself as little, so it seemed, as he spared man or woman when his heart was set upon a matter

They marked their ground, and once again St Quain drew back

" You are ill, sir, and I am ashamed," he said " Will you not wait awhile, and send your friend to me in proper form ? "

" And let you snatch *my wife* from me ? I think not, sir Either you fight me now, or I have you kicked into the high road by the serving-men "

St Quain drew his sword " I am ready," he said, in a voice as hard as Bruce's own

His enemy's attack was overwhelming at the first , Bruce, it was plain, distrusted his own staying-power, and his onslaught, like himself, was rash, impetuous, regardless of all laws St Quain, recovering after the first surprise, played a quiet, watchful blade , he made no effort of any sort to thrust, but parried each wild stroke with a studied ease that brought the other's blood to fever pitch

Time after time Bruce strove to beat the other down , and then a mist came before his eyes , and after that he felt his sword go up, and up, and up, toward the blue-grey moon, and a heaviness, as of death, came over him

He awoke to find St Quain bending over him—bending over him with a strange, almost womanish, solicitude

“ You fought—you fought well, sir,” murmured Bruce.

But shame was strong upon St Quain True, he had striven to avoid the combat, yet it was terrible to fight, as he had done, with one so weak

“ Can you stand ? ” he said “ If so, I’ll help you to the house ; your bandages have slipped, and the blood is trickling ”

“ Where did you prick me ? ” said Bruce of Muirtown faintly

“ Prick you ? Nowhere I robbed you of your sword, and then you fell into a swoon I am English, sir, but I am not the coward you would wish ”

Bruce rose stiffly from the wet, moon-bright grass, and passed a hand across his brow “ I played the bully awhile since,” he stammered, “ I raved and swore, and challenged you to fight, but then—God help me, I had lost a wife ”

St Quain would listen to no more He linked his arm in Bruce’s. “ And I have gained one,” he said softly “ Surely, sir, you will grant feelings to us English, though we’re of a different race ”

Dizzy as he was, sick of heart and brain and fortune, Bruce could not but warm to the manliness, the straightforward wish to give and take which marked his rival’s manner It was his turn now to feel shame, and, in love or war, in pride or shame, it had never been his way to do anything by halves

“ St Quain,” he said, stammering even as he spoke for weakness’ sake, “ you are a man—and I regret that insult more than any other deed of my wild life ”

“ Then quit regrets, for I have forgotten all Good God, does not Janet make a good excuse for any folly ! ”

They had reached the door by this time, and Bruce of Muirtown leaned a heavy hand upon his arm

“ And the girl,” he muttered “ Will she go with you, do you think ? ”

“ Yes, though her mother says she shall not ”

“ And why ? ”

“ I named Culloden in her hearing, and she learned that my father had fought upon the English side ”

Despite his weakness, despite his old sense of loss and his new sense of repentance, Bruce laughed aloud. “ Even for a Scot, she

dwells too much upon Culloden," he said " You had better have robbed her plate-chest than mention what you did The serving-folk are of a like mind, too , you'll have trouble, if you wish to take your bride "

" I'll take her, if all Scotland says I shall not "

Like most wildings, Bruce of Muirtown had a heart He had shown it once to-night, when he could find room for honest admiration of a rival—a rival who had robbed him of a mistress, and who had given him back a forfeit life

" St Quain," he said, still standing on the wind side of the oaken door, " I'll play no dog-in-the-manger part. She's yours, and you shall win her yet "

They passed into the hall, where Lady Lockerbie was seated alone in front of the great fire She looked up eagerly as they came in, and her face was white as Bruce's own, soon as she saw them standing there—St Quain in health, his adversary leaning heavily on his arm

" You—you are hurt, Bruce," she stammered

" No," he said, " except so far as I was hurt before Mr St Quain has worsted me, and given me my life I hope that he will count me his friend henceforward "

My lady rose There was a sort of madness in her face—the madness of long hatred indulged in overmuch She seemed to gain in stature and in coldness

" His father fought against my husband," she said " He is English , he can be nothing to any Lockerbie "

" He chanches to be husband to a Lockerbie," put in St Quain drily, "and he means to claim his right "

Taller yet she seemed to grow, and her grey eyes deepened, and her voice, no longer cold, was full of passion

" My daughter is in safety, sir She would have followed you, to interrupt this duel which has ended so unhappily , but I prevented it "

" I will find her," said St Quain doggedly, " if I spend a twelve-month in the search "

" And I will help you," put in Bruce of Muirtown

My lady looked from one to the other " What is this talk of friendliness, Bruce ? This stranger has robbed you—robbed you "

" Nay, it is I who would have robbed him , and I, no less than Janet, owe my life to him "

Obeying a sudden impulse, Bruce took my lady to one side and talked to her. St Quain could hear nothing of what passed ; but he guessed that his own cause was being pleaded by one who had so lately wished to kill him. And by and by Lady Lockerbie returned, and held her hand out with some show of warmth.

" I cannot pretend to welcome the match," she said, " but I am old, and weary, and I cannot but see that lives may well be ruined. Will you—will you treat her well ? "

Her voice broke at the last , and St Quain saw down into the tenderness that lay beneath her pride.

" I will treat her well," he answered huskily.

My lady turned to a manservant who stood by the door. " Prepare the bridal chamber," she said.

And St Quain looked out upon the loch, the moonlight, and the peaceful sky. And only the whimpering wind was left to recall the storm that had brought a wife to him.

## ESCAPE

## I

THE lamps now made the wet pavements dull gleaming shallows, with pools of darkness, the clouds raced across a dim and sodden sky. Now and again, a gust rising in captious fury came, shaking the heavy-headed roses, and drenched annuals in the little suburban gardens. Warm as the night was, the curtains at No. 5 Elm Row, known otherwise as the Beeches, were drawn, the windows shut. Two men sat in the study at the back of the house, the hour was late. One slight, slim-faced, clear-eyed, smoking quietly, a whisky-and-soda by his side, the other smaller, ordinary of feature, yet good-looking until you studied his weak mouth and heavy chin and furtive eyes. Clever with the cleverness which counts itself as nothing if it does not overreach others.

"Martin, I have said all I mean to say." The elder man spoke smoothly. "Does it enter your head that I am far too good for you, but for your father's sake I let you go free. Here are one hundred pounds in notes, and a little gold. Take them!"

"As final, Glynne?" asked Martin sharply.

"As final. Use them, start with them as you choose. I have had enough of you."

The man called Martin leant forward.

"No one but you knows," he said. "I could replace this borrowed money in a month—this slump is only a flash, and you know it. Give me a chance until the special settlements of the shares I gambled in. It was only borrowing."

"Borrowing which you have done before. No, Dick Martin. It's over. My firm has done with you. You had every chance. The books are here. You see what I must replace and pay. I have one thousand pounds to do it with. Here is my bureau. Now take your money. There is an early train. You have youth, brains—too many. One hundred pounds. I say I have dealt leniently with you."

The younger man leant back, gnawing his fingers. A sinister light in his narrow eyes—youth, brains—one hundred pounds. He who kept a motor, lunched at the Savoy and the Carlton, ruffled it as a rich man in this great London, to be hounded out, flung on the world. And no one but James Glynne knew. He drew a hissing breath. If Glynne were gone, if he could have those books and save exposure—

"I've told the servants you are leaving early," said Glynne, "and now good-bye."

"You'll expose me?" gasped the other.

"I must, I have no choice," said Glynne coldly. "You are not fit for decent company, Martin. Now go."

He stood up, looking on the mantelshelf for his tobacco. A heavy dagger, a trophy from Tapa, inlaid and beautiful, lay on the table. Martin's fingers fell on it—there was a swift movement, a dull sound, silently, coughing a little, Glynne crumpled up, slipped to the floor—coughed again and lay still, wide-eyed and very quiet.

Martin stood back staring at what had been his partner. He let the dagger be—there was a little blood oozing slowly. No sound in the quiet house.

How much was made of killing! It had been so easy, so very easy. He stooped to the still figure, rifling its pockets, taking the keys, he opened Glynne's desk. Yes, there were the notes, the books. He put the former into his pockets, he took up the books. They were not so easy, so he must pack them up. He disarranged the room a little, undid the window catch, took Glynne's watch and chain, and smiled as he did so. His brain was working so clearly that its power almost hurt him.

What fools men were who were caught—who neglected details with the still thing behind them. He wrote a note.

"Dear James—I am off by early train to B, as per your arrangement. Shall be back Wed next. Dine with me at old place. Don't forget Stewart's instructions."  
"R M"

He was careful not to blot the note. He put it in an envelope and all the time he listened. Then he gasped—there was a spot on his shirt-cuff, red and damning. Very quickly he slipped from the room. The clock struck one. He had seven hours' start. There was a train at four to Euston, a slow, crawling thing, which he would catch. He would go to the sea, lose himself there. Take a second

hat and coat. Oh, it was all so easy! He would walk to the next suburban station, slip in there. Stealthily he slipped to his room and opened his wardrobe. He took a shirt and a suit of clothes, and changed, the white shirt with the stain was packed into his bag. He put on a cap, slouched and large, and a dark overcoat, he carried a parcel with another coat and a panama. Glynne wore glasses; he went for a pair.

But now the minutes flew. There was a make-up box in his room, a hair dye. With all the lights up he used it—turning his fair hair brown and dark, doing it deftly, quickly. He pinned the note on his pincushion, ruffled his bed, left his dress clothes, a second white shirt, in his room. He attended to every detail. What fools criminals were! He would come back on Wednesday or Thursday, expressing sorrow—surprise. Take up his partnership, drive his car again. It was all so easy. The books! He had almost forgotten them, they made a bulge in his bag, but he stuffed them in. The house was full of noise. Was that Anne coming downstairs? Would she go into the library and see what was there? With teeth bared, and grinning as a nervous dog, he stood in sick despair. But it had been a gust of wind. He stole noiselessly from his room, slipped into the dark hall, and out. Down the garden path, not so easily now, the great dim world was so big and cool. Steps heavy, slow, on the pavement—a stolid policeman coming his rounds. Martin crouched behind a clump of tiny bushes. What if the man should come in and see him? He was bathed in sweat, his heart choked him.

Constable XX yawned as he came to the gate, clicked it to—it was open—and passed on. Tramp, tramp. Minutes were passing as he got slowly on.

Martin got up and came to the gate. He smiled now. Constable XX had found it open, it might help as they gathered evidence.

He was out on the shadow-haunted pavement, treading lightly, going faster and faster. He would never get to the next station in time. Down Kilma Road, past green squares, each moment a lurking terror. Another policeman. Martin slackened pace, turned before he reached the man, passing away in the shadows, and then flew on. Edward Street at last. He was thirty minutes too soon. A shower came lashing down, he stood in it, not daring to go into the station. A rumble at last—a whistle. There were two other travellers. Martin dropped some money with a cry.

"Get me my ticket—third—will you?" he said, giving a sovereign to a sleepy workman "I've dropped half-a-crown"

It saved him showing his face at the office Off now, rumbling Londonwards, grey dawn stealing across the sky. He pulled his cap down, fearing the light.

## II

Euston came all too soon, with dawn breaking He went out, bag in hand, into the quiet streets The sea! Yes, the sea was best.

He had no pity for Glynne Glynne had been hard to him, cruel, unjust He might have understood a rash speculation, not turn a man out of light into outer darkness The milk carts were about now He passed through London unnoticed, a mere traveller carrying his bag Criminals were such fools they took cabs, gave themselves away A man on foot was lost in the vast city So he walked on until the sordid large houses and dim, dirty squares gave way to shoptown Which should it be? Charing Cross, Victoria, Paddington, Waterloo? He would go down to Folkestone He chose Victoria

The waiting-room was almost deserted. He went in, lying down on a sofa, for one man sprawled half asleep in a chair He turned his face away. Better to run no risks And then a sudden qualm of fear and misgiving How could he come back? They would ask him where he had been, they would wire to every branch of the business Staying with friends? He must produce the friends The easiness of it all slipped from him The dog Murder barked at his heels He lay easily no longer, but crouched on the sofa, a criminal fleeing from justice.

But certain—quite certain—of escape, and with a thousand pounds to help him He smiled again more easily After all, it was better than being a branded thing with a bare one hundred.

Ten minutes later a man in a floppy light overcoat and a panama hat, wearing spectacles, came out for a cup of tea If they looked for any one, it would be for some one in a cap and dark coat The sleepy man went into the refreshment-room, where flaring lights fought with the rosy morning Martin saw him and slipped away, sitting out on a bench, apparently dozing in the now filling station. It was his first touch of fear He got his tea later, gulping down the hot, tasteless stuff A clock struck eight They knew by now! Wires



would flash, the police seek and hunt, but by that time he would be at Folkestone, safe in some small lodging. Third class again.

He sat in a corner of a third-class carriage, smoking, with bent head, thrills of fear upon him. He might have dyed his hair badly; there might be streaks in it. He kept his back wedged against the dusty cushions. Stations slipped by. The morning grew hotter. A mere traveller, lost in the crowd, he took breakfast at the railway. It was early yet to seek for lodgings. He left his bag, a new one and as yet uninitialed, at the station, and went down to the sea, letting the morning drag. Then into the busy town, and out along the streets with apartments in them. He wanted a poor place, and found one, clean and small. Here he gave his name as Ralph Meldon. He haggled for terms, he was most anxious to know if he could have another room later, a friend was coming to join him. He was discursive to the landlady. They were from Australia, he said, coming to see England, had come to Folkestone for a week or so.

He sat down behind the lace curtains with a sense of security. Who could trace him here? He was not feeling well, he had a cold, he said. Mrs Simmons got him a chop—a greasy, sodden thing—and some porter. She was too willing to housekeep. His bedroom was upstairs. He went up there after lunch. There was a key. The windows had clean lace curtains. He turned the key crisply and sat down to open his bag. The books, heavy and thick, lay among his scanty clothes. He tore the pages out, and burned them in the paper-decked grate—slowly, so as not to make too great a smoke. The covers were too stiff to burn. He cut them up into strips which could be dropped. But the grate now was full of charred, hot paper.

The woman would wonder, perhaps suspect. He gathered them all out, tying the charred pieces up in a newspaper. They, too, must be lost. He replaced the crimson frills and washed his blackened hands. New clothes he must get them—lose all these. He looked down at his shirt, and sprang up. "James Glynne" written neatly on the front, the wash had got mixed up. Off in a minute, changed wildly for one of his own, which was not marked. And what to do with this? He lit a match, holding the shirt over it until the words were burnt away, he trembled and shook as he did so.

He had brought one suit of clothes, his name was in it. He ripped it out, burnt it too. Socks—they were marked. At last they

were all free of his name or Glynne's The hot afternoon drowed across the world, and he sat cold and shivering in his bedroom.

### III

His coat hung behind the door, the dark one he had started with. No name in it, but—why should he have two coats? He stuffed it into his bag, and locked the bag and stood up, sweating now, glancing down at the quiet road But every hour counted When his beard grew no one could tell him They would never look in a big watering-place He had forgotten nothing, nothing

The evening waned A thundering knock at his door brought him, panting, from a doze Who was there? Who——

"Yer tea, sir"—from Mrs Simmons

Sloppy tea on a japanned tray, melting, strong butter; a loaf of bread, a slice of stringy, pink ham on a thick plate He drank the tea, but could not eat

Mrs Simmons was sympathetic.

It was his chest, he said lightly He had, worse luck, to grow a beard He would go out for a letter now Then a sudden fresh fear The beard would sprout yellow, betray his brown hair

He locked his bedroom door He had parcels of burnt paper in his pocket Down the streets of little houses and into the town He wanted more clothes There was an outfitter's, he went in—shirts, socks, bought prodigally

The shopman looked at him critically Martin stepped back. These notes might be numbered He must change them, get away, but change them first He went out, parcel in his hands, breathing hard

Down to the shore—the tide was lapping in There were people everywhere, he strode along, cursing the heavy parcel, until he came to comparative quiet Then the little parcels fell on a gurgling, quiet sea, they would soak, sink before morning Shrill voices behind him roused him

"Gladys, Herbert, the man is floating paper boats!" A rush of barelegged children to watch the boats. One opened, the scraps of charred papers fell on the sunlit waters, dancing across them.

"What foony boats!" said the prattling voice. "Just burnt papers."

Fear! The fear he could not put away as he went back. These children would talk; people would wonder, and perhaps inquire. The slit covers were dropped in nooks and crannies on the beach before he went upwards to the Leas, crowded even in July. He was safe there. But never quiet. Into the town again. He bought some studs, and changed another note, some links in another shop. He had plenty of gold now. He snatched food in a cheap hotel, and read an evening paper.

The lines he had expected were black before him. "Awful murder in the suburbs. Mr James Glynne stabbed. The police suspect robbery. Mr Glynne's partner, Mr Martin, away on business, address not known. Watch and chain missing. Bureau rifled and open."

Watch and chain! Martin turned sickly green. They were in his bag.

He left his dinner, sped back to his lodgings, and on the way sent himself a telegram. These were the little things that fools forgot.

It came ten minutes after he got in. Half of it was used to light a pipe, the other half left on the table for Mrs. Simmons to see.

"Sorry can't get away to-morrow—Tim."

Sleep curiously came to him. He had done everything. He was lost down here. But he stayed in bed next day, and felt the stubble grow on his chin—already his spruce good looks were gone. The papers revelled in the crime—some burglar—the window was left open. They had a clue.

Martin laughed. If his beard would but grow he would slip to France and away.

He lay in his room again, complaining of headache, and then went out. Half-way to the beach he took his handkerchief out. Oh, was he mad—mad. His name was on the corner. After all he had forgotten something. He might have dropped it any minute. Had he done so? He stood clasping his hot head, trying to remember.

The watch burned in his pocket. He slipped away along the beach, on with the handkerchief clasped tightly in his hands, until he was alone, to watch it burn. But madness—madness—clever as he was he had forgotten this simple thing. There might be another handkerchief in his room. With fevered fingers he dug in the moist sand. A fool would throw the watch into the sea. He would bury it. It sank at last into a deep hole, with a little smoothing over it might be there for ever. The blood-stained cuff went into another

hole But he hurried home, posting a post-card and letter on the way

Up to his bedroom, searching wildly His other handkerchief was in his bag, the damning name upon it He burnt it too. Out again for a bottle of hair dye, going warily to-night, he was not altered yet Back, to darken the stubble on his chin and lip, growing fast now But in a day, two days, he would be safe

#### IV

He ate a slab of cold atrocity sent up with lumps of yellow, soapy potatoes, and read the paper, taking it up easily A day or two now, and he could be away—Canada? A man could live well there, there were some shares he wanted to buy He would send money for them, give his address out there He ate and drank with appetite

"The murder at the Beeches Mr Lloyd, of the London and County Bank, came down to-day It appeared Mr Glynne had drawn a large sum in notes on the day of his death The bank hope they can trace all the numbers There is no news of Mr Martin" Suspicion is beginning to fasten itself upon him He was not seen to leave the suburb Notice of the notes will be given now The porters at Grangedon saw a man with a bag—a man in a dark coat and cap pulled down He stopped, and he changed two notes here Panic in the quiet little room, the paper flung down He would change no more He could not pay for his passage out He gnawed at his fingers again, and sped out into the night

A little later he was back, and called Mrs Simmons. He showed her a portion of his wire

"Come at once to Cheltenham. Angeenia ill" He must go there immediately—in the morning—by the first train

And at night he could not sleep Children had dug upon the beach, the watch had been found All night he saw the moist sand raised, caught the gleam of gold He stared in the little glass in the early light The stubble was thick on him and dark His eyes were hidden by smoked glasses Bag in hand, he went to the busy station. Who was that man there, staring at him? He hurried away to the train. Was that a detective there? He changed at Redhill, and went across country—anywhere—to some big town. Night saw him at Manchester

buying a new coat ; he left the blue one in the train. Travelling on again Birmingham

He came to obscure lodgings, lay in terror in an attic-room. It was so easy, so easy, but fear dogged each dragging hour The papers again—opened in trembling eagerness Nothing more He laughed his fears away After all, it was so very easy to escape Some of his jauntiness came back He went out into the smoky streets, and into a restaurant The glass, which threw back the reflection of a commercial-looking man, with brown stubble on his chin and brown hair, laughed at the possibility of recognition

Dick Martin was lost He could go abroad The money would be changed there at some shop He could buy jewels, and then pawn them. He had not thought of that

He started up with a laugh That could be done even in London, and he would be in France before they raised the hue and cry He would buy a wig—red, for choice—and go up now, leaving his bag at a station—and—his hand had waved as if in joy at his sudden plan—a glitter caught his eye. The man who had forgotten nothing wore a peculiar old seal ring, known to all his friends A barbaric thing, yellow topaz set in blood-stone and fringed with diamonds His hand dropped to his side Had every one in the restaurant seen his guilty start, the sudden hiding of his left hand ? Who was that man over there with close-cropped bullet-head ? A detective, perhaps “ A reward is offered for any information concerning Richard Martin Five feet nine inches, slight, blond hair, clean-shaven, last seen in dark overcoat and tweed cap, wears a curious signet-ring on left hand ”

In deadly fear he conjured the advertisement up. Stealthily and guiltily he slipped the ring into his pocket and took the paper up

“ Strange discovery at Folkestone A little girl, digging in the sands, has found a gold watch and chain It has been given to the police, and is believed to have belonged to the murdered Mr Glynne ” That was real, staring at him So the sand had given up his secret Even now they might have traced him.

Ring in hand, he slipped through the crowded streets. He let it drop suddenly, walking quickly on, and had not gone three paces before a child put it into his hands He went to the foul, sullen canal, and saw it flash before it fell into the water That was gone now He turned away

"Oh, it was so easy" Yet fear dogged him a little, drove him north to Newcastle—back again to Liverpool, a furtive, weary figure hiding in sordid lodgings, and yet still assured of his cleverness

He took heart of grace in the huge shipping city He would dare London and the diamonds His last change went on a new overcoat and a new suit of clothes He got into the London express, planning the future, which was yet to be his, but with him now he carried a revolver A stolid, dull-looking man got in with him, a conversational man, who spoke of the mysterious murder

It was a good chance of hearing the opinion of outsiders "Some tramp," said Martin carelessly, leaning back

"No" The man shook his head "Not at all It was the junior partner Lord! they've as good as traced him now They can lay their hands on him when they want to"

The carriage swayed before Martin's eyes—a blood-red mist blurred his sight Traced him! He gripped at his collar

"I don't see how they could," he heard himself answering "He—forgot—nothing He seems to have got away cleverly Any one could if they took the trouble"

The bullet-faced man came nearer him

"You don't know the police," he said, "they've detectives everywhere A man's traced, he doesn't know how There's the clue of the watch at Folkestone They haven't lost that In fact, I hear they're following him from there"

It was horrible to choke

"I've done some work." The man leaned back "I know They always forget something, these murderers They change their clothes, the colour of their hair, and walk about, wearing, perhaps, some trumpery bit of jewellery which betrays them The landladies suspect them, because they grow new beards and go out by dusk"

The horror of it gripped Martin as a steel trap This man was playing with him He knew everything Every ruse he had resorted to As they neared London he would be arrested He had left nothing undone Yet this stupid-faced man had unravelled every carefully-twisted thread The train rushed past the placid waters of the Dee, tearing Londonwards

In one great wrench and tear his nerves fell to shreds; he shrieked in his agony—with a wild mixture of exasperation and relief

"You know me!" he yelled, standing up, swaying as the train swayed "Oh, you know me—Martin, the murderer—and you follow me to torture me I cannot change my notes, for the numbers are known You know I've dyed my hair, that I wore my signet-ring."

The stranger was up, gasping in astonishment

"I killed him because he had no pity, but I'll not hang for it—I'll not—see! You bloodhound! I have my remedy!" There was a sharp report, and something lay shuddering on the carriage-floor

Shouts—the attendants rushing in, the door shut, and yet the word drifted It was Martin, the missing junior partner of James Glynne. The whispers flowed from carriage to carriage A quiet, shabby-looking man ran down the passage, entered the smoky carriage, and heard the story as it was poured out

"And I," the bullet-headed man said in horror, "I'd nothing to do with the police I never heard or dreamt of this being the murderer, except that I take an interest in detective stories and in criminal cases I'm a commercial traveller Oh, my God! It's awful for me!"

The shabby little man knelt by the figure which they had raised and laid on the seat

"I was chief man on the case," he said simply "The odd part of it was we'd completely lost trace of him And the numbers of the notes were never known Nor were we ever sure he did it He made one of the cleverest disappearances on record He had beaten us all round"

The man on the seat raised dimming eyes He had heard and understood A wry smile twisted his white lips

"So—hang—easy—to beat you," he whispered. "But—now——" his mouth slacked They covered his dead face gently and stood staring, as the express hummed Londonwards, at the face of the man who had neglected nothing in his escape.

A. J DAWSON

B 1872

## BILL'S SHORE JOB

(A Yarn of "The Genteel A B")

THE evening was full of still August heat, and the promise of thunder. My friend the night-watchman had forsaken his customary stronghold, the galley, and received me, with meditative affability, upon the fo'c'sle head, where we enjoyed whatever air might be stirring, with a clear view of the inky water and the few other ships then lying in the dock. There we sat, gazing at the break of the fo'c'sle, where innumerable look-out hands had tramped to and fro, under all kinds of night skies, from those which arch wild grey seas far south of the Horn, to those in which great stars hang like jewels above the hot silences of equatorial waters. The watchman seemed affected by a mild melancholy, and spoke of bygone days as one who had known losses, and without any regard for my question as to what happened to Bill after the meeting with Lord Chasemore.

Nowadays, of course, every blessed ship—such as there are that are ships, and not puffing smoke-stacks—seems to be one of a string, all owned by Messers blooming So-and-So an' Co (Limited). And limited it certainly is, when you come to grub, and liberty days, and sailormen's quarters, and the like o' that. But it wasn't always so, not by long odds. Even a very few years ago there was a many ships, and good ships, that was as you might say family affairs. And things was better for sailormen then. You knew who you was working for, and they knew you. But as for these "Limited" concerns, they've no soul to be damned, and nothing you could lay a rope's end over, nothing but a manager, in a glass case, and a board o' directors who think in double columns o' fractions, and don't feel at all.

The watchman pensively spat into the dock, and slicing a large wad from the end of a new plug of tobacco, stowed it with deliberation in the special corner of his mouth which habit reserved for this purpose.



Then he took up his parable with a note of added definiteness which prepared me for reference to his hero, the genteel sailorman.

Now I'd wager you've never even heard of Hedger and Paul of Cardiff. Maybe they're chawed up now by one o' these cormbines the papers tell about. But a while back they—leastways he, for there wasn't never no Hedger in it, so far 's I know—owned three of the most comfortable ships sailing out o' Cardiff—two full-rigged clippers and an eight-hundred-ton barque that could sail as close to the wind's eye as—as a archangel. Yes, I've seen the *Cutlysark* and the *Thermopylae* in my day, but, on a bowline, I never saw anything sweeter than the *Mary Paul* out o' Cardiff. It seemed a sin to put coal into her lap, for she'd lines like a yacht, and I reckon the man who skippered that packet ought never to have wanted any other kind of a wife. She was a lady in all weathers, but give her a bowline and, by the thick o' my arm, it brought the water to your eyes to hear her walk and talk!

We made three round v'y'ges in the *Mary Paul*, Bill Chasemore and me, so at last it got to be almost as if we'd married her and was on kissin' terms with her relations. Why, we knew Mr Paul and the office folk almost like shipmates, and Bill and me had the same two bunks in her fo'c'sle all the blessed time—close on five years.

Well, and then the third voyage we carried Miss Mary Paul and her aunt Susan Mrs Richardson that was. Miss Mary she'd had scarlet fever, I believe, and come near handing in her checks. Anyway, the doctor he'd ordered a sea v'y'ge, and there was the smartest barque out o' Cardiff in the front parlour, as you might say, and so we carried 'em. Well, at your job you may have seen queens and the like o' that on their travels, but you never saw any one made such a fuss of as we made of Miss Mary. The first mate—he reckoned to be skipper in another v'y'ge or two—went pretty near crazy about her before he was done, and the whole blessed ship's company, from the Old Man down to little Billy Worms, the boy, gave up its watch below to do something for our pretty passenger. You never saw the like.

The mate he talked more like a missionary than a man when he gave orders, and to hear the b'sun, with his "If you please" and "Quick as you can, men!" instead of—well, you know what—I tell you it was as good as a play. We had services on a Sunday, like a steamboat, and, once they got over their shyness, the crowd would fairly fight over who should do the singing out on main-braces or

halyards when Miss Mary was on the poop The way they'd jump at any job that took them aft, and the time fellows spent in dolling up before taking a wheel, it would have made a horse laugh As for me, I used to get men to take two look-outs for me by giving 'em my trick at the wheel

There's no sort of doubt but the mate meant real church and orange-blossom business, and I give you my word I fairly pitied that man at times, mate and all as he was, and out of Peterhead at that. You could see he got no taste out of his baccy three parts of the time And for why? Miss Mary'd walk away from him any day to put in a word with Bill Chasemore And, mind you, the queer thing was Bill never seemed to take any very great stock of her, like the rest o' the crowd When they was all a-yarning about what she'd said, and how she looked, and the way her hair took the sun, and that, Bill never said a word And though I reckon he's got about the best chest o' clothes that ever went to sea—a royal prince couldn't have a finer kit—he never dolled up like the others to take a wheel I must say that fairly surprised me The rest of the crowd would put on shoes, and often as not a coat—one chap, a South Shields man he was, actually mounted a collar on Sundays, and had three stand-up fights over it—even in the doldrums But Bill, he'd just lounge up to that wheel in his shirt and trousers, same as if there wasn't a woman nearer than Trincomalee and Merrimashee To be sure, his shirts was always white as milk, and his dungarees scrubbed out every other time he wore 'em But that's no more than he's always done

But, say what you will, women is mighty contrary creatures and there's never any telling which tack'll suit 'em best Bill in his shirt an' trousers and bare feet, seemed to suit her better than Mister MacFee in his best shore clothes, or any other man in fresh-greased bluchers and a collar Women are that queer and contrary

Along about the beginning of cold weather on the homeward passage, I fancy Bill began to soften a bit But he never talked about her like the rest of 'em, and when we paid off in Dundee, upon my word I don't believe he'd even have stayed by to work the ship round to Cardiff if I hadn't a-made him I had my work cut out, I tell you, but Miss Mary, she said to me before they went ashore "Please, Mister Martin," she said, "don't you let Mister Chasemore leave the ship I want you two to come round to Cardiff with her—to please me."

Now, if you'll believe me, when we got round to Cardiff there was a letter waiting for Bill from Mr Paul, and Bill he never said a word about what was in it till we were turning in at our lodging that night, though I was just a-boiling, and he knew it. Then, when I had him fairly in a bight about it, he said, just as careless as a man might talk about weevilly bread "They want me to chuck the sea, and take a shore job at the office."

Well, you can depend I was in a fluster. But the rumbustuous thing was, Bill didn't feel very sure whether he'd do it or not. You can wager I was sorry to lose him for a shipmate, but, good sakes alive! a shore job with the owners, sleep in every night, and—and Miss Mary as a sort of guardian angel—well, what would you think? Yet, if you'll believe me, I had to fairly hustle Bill into that billet, as it might ha' been a Nova Scotia bo'sun booting a sick Dutchman aloft in a gale. But I got him there at last, in a long black coat an' all, till you couldn't have told him from an undertaker in a good way of business. And Miss Mary, she gave me a beautiful silver-mounted pipe in a case, with my name on an' all, and a couple of gold sovereigns in a purse, she did, and I've got the pipe now, though, of course, I don't smoke it, but 'tis an A number one pipe, an' hall-marked silver on the stem.

Well, the barque she was to be laid up for dry-docking<sup>\*</sup> and a thorough overhaul, but I'd a pretty fair pay-day, an' what with Miss Mary's two quid, an' one thing with another, I thought I'd stay ashore and wait for the old barky again. So I did, and now and again I'd stroll into the office and pretend to want news of the hooker, just to have a glimpse of Bill in his black coat, sitting there with the others, solemn as a ship's figurehead, and full of learning and respectableness. Bill would always shin down from his stool and get leave for a bit to take me out for a drink, as though I was a ship's husband or a skipper home from sea. I used to want to talk about the office, but Bill he'd talk ship till you could smell bilges, and the language he used those times was more like a Yankee second mate's than a Christian's. He'd swear more in ten minutes then than in a round v'y'ge at sea, and it seemed to ease him like a black draught.

Next thing I heard was he was taking tea up at Mr Paul's house, and becoming quite the society man. And then I heard the *Mary Paul* was under the coal shoots, and next day I signed on at the shipping office. I went to say good-bye to Bill, and we had a long yarn in

the "First an' Last"—I dare say you know the house Bill's language would have fouled a fair wind I give you my word, the swearing he did about offices and owners and that would have shifted barnacles It made me quite uneasy

We were to warp out at daylight on the Wednesday, and I slept aboard Tuesday night in my old bunk, after having a little flutter with a Dago who had stowed his dunnage in Bill's old bunk, alongside mine I tell you I sent that Dago ashore with a knob on his jaw that looked like toothache, though I was too sleepy to say much when I heard the beggar turning in again some time past midnight

Come daylight I did my best to rouse that Dago out to make him fetch coffee, but the beggar was all tangled up in blankets and dead drunk, I reckoned, anyway, I couldn't shift him When he did shift we were out past Lundy, in a stiff north-easter, and then he wasn't the chap I'd punched at all, but Bill Chasemore, who'd squared the Dago, and come aboard in his place, as jolly as if he'd made a fortune instead of chucking one away to come to sea

We had to leave our old barky in the Colonies, for Bill said it would never do for him to be paid off by Hedger and Paul again "Don't talk to me of offices and shore jobs," says he Certainly the ways of a man like Bill, more specially with a woman, are like what the sky pilots say about peace—they passeth all understanding

## THE LITTLE TOWN

### I

"IT is quite a small place "

That was all the information I could obtain I had been referred to the omniscient Joe Shepperton, and this was everything he could tell me "St Erth," he had said "In Cornwall?" And when I had explained that this was another St Erth, he had said, "Oh! quite a small place" Probably he had never before heard of it

As I looked out into the darkness and tried to dodge the reflection of my own face in the window, it seemed that we were passing through country of a kind which was quite unfamiliar to me I had a vision of mountains and the broad roll of great forests, an effect that may have been produced by clouds The yellow lighted reflection of the now familiar interior jutted out before me, its floor diaphanous and traversed by two streaks of shining metal And my own white face peered in at me with strained, searching eyes, frowning at me when our glances met, trying to peer past me into the light and warmth of the railway carriage

Once we crossed an interminable bridge that roared a sonorous resentment against our passage I could not explain that bridge We were not near the sea and no English river could surely have been so wide Yet the bridge was not a valley viaduct, for I caught the gleam of water below, some reflection of paler shadows from the lift of the sky

This adventure into unknown country was immensely exciting It was discovery I gave up my strained enquiry into the world beyond and let my imagination wander out into mystery I was in the midst of high romance when the magnificent energy of our triumphant speed was checked by the sickening grind of the brake . . .

The little station was a terminus, one forsaken, gloomy platform that stretched a grey finger into the night out of which we had come I tried to see what was on the farther side, across the metals, but beyond was a black void I received the impression that I was on

an immense height, that the dimly seen low stone wall was the parapet of some awful abyss

I could form no idea of the town during my minute's walk from the station to the rooms I had engaged. The whole place seemed to be very ill-lighted. All I could see was that it hung on the side of a hill.

I went out when I had had something to eat. It was only a few minutes past eight, and I was eager for adventure. I told my landlady that I was going down into the town to explore.

"It's very dark," she said, with a note of warning in her voice.

The street in which I was staying dipped gently toward the town, but as I went on the dip became more pronounced. I congratulated myself on the fact that there would be no difficulty in finding my way back. The lie of the land would direct me, I had merely to ascend again.

My street was longer than I had expected. At first there were houses on one side only, but farther down the roadway narrowed and there were houses on each side. I classified my lodgings as being in a sort of suburb grown up round the railway station which was detached for obvious reasons—no railway but a funicular could have been carried down that hill.

I came to the bottom of the street at last and found another narrow street running across right and left. Opposite to me an alley continued the descent in a nearly straight line. Far below a dim lamp was burning. I decided to keep straight on and plunged down the alley.

It was interminably long. At the lamp it twisted suddenly but still descended the hill. "The place is bigger than I thought," was my reflection. I saw, however, that as the road continually fell before me, I must be keeping a right line.

The town was not deserted. There were movement and the sound of voices all about me, figures loomed up out of the darkness to meet me and clattered past over the rough cobbles. I heard laughter, too, and whisperings in the dim black recesses of courts and doorways, and once or twice I caught the tinkle of some thin high music far away in the distance.

Everywhere I was conscious of the stir and struggle of life, of unseen creatures as careless of my presence as I of theirs.

And still I had not come as yet to the town itself. I had pictured to myself some wider streets, or open market, a place of lighted shops and visible life. I began to wonder if I had not passed by this imagined centre. I became a trifle impatient. I hurried on, down,

always down, through the wriggling maze of tiny narrow alleys and passageways, lighted only by an occasional flickering lamp, bracketed out from some corner house

"A small place, indeed," I said to myself "It is an enormous place" I received the impression that I might walk on for ever through that tedious ravel of streets Yet I knew that I could not be walking in a circle, for I was always descending

I gave no thought now to the long toil of my return up the mountain—already I thought of it as a mountain—I felt that I must and would reach the bottom

It was not what I had expected to find, yet the reality, when I came upon it, was so inevitable that I believed it to be the thing I had always anticipated

I turned at last out of a passage so narrow that my body brushed the wall on either side, into a small square of low houses and the floor of the square was flat On all sides it was entered by passages such as that from which I had just emerged, and all of them led upwards About and above me I could vaguely distinguish an infinite slope of houses, ranging up tier above tier, lost at last in the black immensity I appeared to be at the bottom of some Titanic basin among the mountains, at the centre of some inconceivably vast collection of mean houses that swarmed over the whole face of visible earth

"There is surely no other place like it in the world," I said to myself in wonder

## II

There was light in the square, two lamps that flanked an open door Above the door was a faded sign I guessed the place to be a hall of entertainment, probably a "picture palace"

I walked over to it and read the sign, it bore the one word "Kosmos"

"Some charlatan," I decided

No one was taking money at the door, and after a moment's hesitation I went in

It was a queer little hall The bareness of the walls was partly hidden by pathetic attempts at decoration, some red material was rudely draped over the raw brickwork, and a few unframed, dingy canvases—the subjects indistinguishable—were hung on this back ground

At the end was a rough proscenium opening, and behind it a stage

that appeared to me quite brilliantly lighted, after my long sojourn in the darkness

In the body of the hall some twenty persons were seated on rough benches staring at the still unoccupied stage

I found a seat near the door and waited It came to me that the stage was disproportionately large for the size of the hall

And then out of the wings came wobbling a tiny figure, and I realised that this great stage was set for a puppet-show The whole thing was so impossibly grotesque that I nearly laughed aloud

Presently I turned my attention for a moment to the vague forms sitting round me, some of them silhouetted against the light of the stage But none of them returned my stare " Rustics ! " I thought, with a touch of contempt " Men and women of such small intelligence and narrow experience that even such an amateur show as this amuses them " I turned back to the performance, though the foolishness of the doll's actions was beneath criticism

Nevertheless, after a time, a certain fascinated interest began to grow upon me, and I watched the performance, chafing at its slowness—with increasing attention I tried to disentangle some meaning, some story, some purpose, from the apparently aimless movements of these tiny dolls staggering about their gigantic setting Every now and again I thought that I understood, that there was an indication of some sequence of action, some development of a theme But always the leading figures wavered or fell at the critical moment, and chaos followed, a hopeless, maddening jumble

One piece of management, however, deserved and received my approbation I had never in any marionette show I have ever witnessed seen the suspending wires so cleverly concealed Stare and criticise as I would I could see no sign of any mechanism whereby the dolls were supported and animated This did, indeed, give me a curious sense of reality, it made me feel that these poor ridiculous little figures had a sentient life of their own Then some senseless action or helpless collapse reminded me of the invisible wires, and my pity for the feeble dolls was turned to contempt for the ineptitude of the operator

Dwelling on that ineptitude, I began to lose my temper and I became conscious that other members of the audience were being similarly affected I heard impatient sighs and half-suppressed groans of despair when some doll attempted to strut across the stage and collapsed half-way. -



I looked round me again and saw that men were twitching their arms, hands and fingers, leaning this way and that as if to influence the movement of the dolls—just as a man will strain and grimace in order to influence the run of a ball over which he has no sort of control.

I discovered that I had been unconsciously making the same foolish movements, and, also, that our attempted directions were not concerted. There was no unison, no characteristic sway in this direction or that. It was plain that we wished to influence the dolls in contradictory ways.

But one feeling, I am convinced, animated us all, we were unanimously and angrily critical of the unseen operator, we were all convinced that we could work the unseen wires far more efficiently than that bungling performer. Indeed, the fact, so far as I was concerned, seemed clearly demonstrable. The actions of the dolls were so infantile, so contemptibly purposeless.

That obsession grew upon me. The mismanagement of the whole stupid affair began to appear of quite transcendent importance.

I could not watch without striving to help, and I was forced to watch . . .

### III

The performance closed abruptly.

The curtain descended without notice, apparently in the middle of the play, unheralded by any grouping or arrangement which might suggest a finale.

The audience, almost in darkness, were left to stumble out as best they could.

I could not find the exit, and when I did find a door it was not the right one. It opened on to a flight of steep narrow stairs.

It occurred to me that this must be the way up into the flies, to the place in which the operator sat and controlled his dolls. In a sudden mood of determination I decided to seek him out—I would give him some primitive instruction. He must be some ignorant countryman. I would give him a few useful hints in the conduct of his business, suggest a story for his dolls to act, some sequent, purposeful story moving toward a climax.

I stumbled upwards in the dark, one hand on the cold rough wall, the other stretched out before me to guard against any obstacle which might be in my path. It was a very long staircase, for the proscenium opening was a high one. When I was nearly at the top, the stairway

twisted unexpectedly, and I found myself looking down on the still brilliantly lighted stage

Before me in a great chair that was almost a throne an old man sat gazing tenderly down upon the stage below him. There was a calm, gentle wisdom upon his face and he moved his hands slowly this way and that

I looked down and saw that although the curtain had fallen and the hall was empty, the performance was still going on in the same, aimless, inexplicable manner

Perhaps the old man was practising his art, or perhaps he did not know that the curtain had fallen and the audience gone away—in any case he sat there with a sweet intent smile, passing his outspread hands slowly to and fro over the heads of those foolish, inept figures beneath

And even then I could see no wires, no connection between those mesmeric hands and the tottering figures

A strange diffidence had come over me. From where I stood it appeared an immensely difficult task to control and guide the movements of those dolls below

My anxiety to instruct died out of me. I began to marvel at the dexterity with which the old man would sometimes raise a falling doll by the lift of his little finger. And from my new point of view I thought I could at least discern some purpose in the play

For a time I stood motionless, watching, and then I looked again at the operator seated in his great chair. He was quite unconscious of my presence. He wore always the same serene, gentle smile. He was in no way perturbed when his dolls stumbled and fell. He sat serene, intent, and his hands moved ceaselessly to and fro over the great stage

I crept away softly and found my way out

When I reached the square again the moon had risen.

I looked up and saw the little railway station a few hundred yards away.

It was a stiff climb, but I reached home in ten minutes.

The town was, after all, quite a small place . . .

In the morning I wondered whether the old man still sat in the same place manipulating his dolls

I wondered whether he was a charlatan or only very old, and very, very foolish.

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\*  
THE MAN WHO WAS BLIND

**H**E was, as it is said, born blind From the moment when his sightless eyes, with the wistful pathos of all young, inarticulate creatures mirrored in their inscrutable depths, had seemed to gaze into his mother's face, he had had his lonely being in a world of profound darkness But it was no hereditary taint that had condemned him to spend all the days of his life, from the cradle to the grave, in impenetrable gloom and rayless solitude His mother was of a good yeoman stock fair, blue-eyed, white-skinned, dimpled, and radically robust, whilst his father was of ancient patrician lineage, whose family escutcheon had never been blotted by any such sinister visitation as blindness Thus his grievous disability seemed to be due to one of those mysterious, wanton mischances which from time to time do recur to flout and deride and set at naught the wire-drawn learning of science

The cold fact stood he was blind !

For him, the mellow sunshine had never been more than a sensation of genial warmth For him, the flowers had been only sweet perfumes His loved ones were as so many kindly voices, so many elusive presences, with warm, caressing hands and clinging lips, who sometimes dropped hot tears upon his cheek His invisible world was full of cruel protuberances and clogging obstacles against which he wounded and bruised his body, full of alarms and disconcerting, harrowing noises, a place of harsh surfaces that set his teeth on edge whenever he touched them with his sensitive finger-tips Light and shade, night and day, colour and form, distance and proportion, beauty and ugliness all these were words to the meaning of which he held no clue

If money implies wealth, then the Blind Man was rich, but it is likely that he set greater store on the unfailing devotion of his mother and sister, with whom he lived, than on all his possessions His father had died, half heart-broken—for he had been ambitious for his only son—when that son was but a child The child grew into

a comely, lusty youth, became at last a masterful, strong man, but withal sweet-tempered and gentle, virile in spirit and tender in thought. Music was the crown of his life, its comfort and its solace lightening his blackest moods and bringing balm to his soul in his moments of deepest despondency. He sang very sweetly in a soft, flutelike voice, and could play, besides the piano and the organ, the harp and the violin. He delighted in good literature, too, and was made free of the magic world of romance at an early age. Good company, good wine and tasty dishes, the wit that is pointed and polished like a sword, the humour that is full-bodied yet genial, like a generous port, the laugh that ripples out heartily, and the pathos that is simple and not unseemly, all the tragedy and comedy, in fact, of this old variety show of a world, he rejoiced in exceedingly. He was—in the old phrase—a full man, and save when his affliction set some irksome prohibition upon him, and so brought home anew the deadly, stultifying nature of his infirmity, he was a happy man also.

For the most part, he lived in an old house on the coast. He revelled in the changing music of the sea and in its salt-sweet savour. Towns frightened him, though he never confessed to his fear. Among houses he had a sense of being stifled and overborne, the strident noises of the streets were torture to his shrinking ears, and the musty, rancid odours offended his nostrils.

Sometimes, however, he dwelt among mountains, and at first the abiding calm of these immutable fastnesses of Nature was grateful to his quivering sensibilities, but, after a little while, the unbroken, everlasting silence would oppress him, he grew afraid to be alone, for then he seemed to hear his secret thoughts clanging in his head like bells. So he would bid his women-folk take him back to his seaside home again, and, in the roar of ocean, the screech of the undertow, the cold sprinkling of flying, stinging spray on his face and hands, he found peace once more.

Thus his eventless life continued for twenty-four years, and he had yielded up all expectation of ever beholding the wonders of earth and sky and sea. Many great physicians, specialists in all forms of blindness, had come to examine into the cause of his malady, and each had gone away sorrowfully acknowledging that his case was beyond human skill. He submitted uncomplainingly to these tiresome inquisitions for the sake of his loved ones, but he had soon ceased to cherish hope. Indeed, he felt—being a strong spirit and

no weakling—that to entertain fallacious hope was also to invite despair, whilst in resignation there was at least peace. \*

But in his twenty-fifth year persistent rumours reached his ears of a great Italian doctor who had given sight to many born blind, and a trusted friend, named Wyman, himself an oculist, was despatched to Italy to ascertain, if possible, the truth or falsehood of these reports

“Not a very nice man, this Pereira,” was Wyman’s report on his return “But no charlatan, as jealous rival practitioners would like to make the world believe I have myself seen——” And he went on to describe the miracles of healing he had witnessed “He is willing to undertake Ferdinand’s cure, but he makes one *proviso* against failure ”

“And that ? ” breathed the mother

“He says that he can hold out no hope of Ferdinand’s ever recovering his sight if he were really born blind ”

The eager faces of the women were blanched in that instant.

“And—he was born blind,” the mother faltered

“Pereira, even though he has never seen Ferdinand, says probably not He told me, what, indeed, I know to be true, that it is the rarest thing in the world—a thing so rare as to be almost unknown—for a human being to be actually born blind He maintains that Ferdinand was once able to see, if only for a few hours immediately after birth ”

“We should not have known, of course I myself did not suspect the sad truth for two whole days, and I watched his face all that time ”

“Pereira holds himself at your disposal,” said Wyman “It is extraordinary in so great a man , but I am afraid he inclines to be a little mercenary He has suffered a good deal of misery and privation in the past, I fancy, and now, as you know, he is the laughing-stock of half the foolish, incredulous world, and it seems rather to have embittered him ”

“He is welcome to all we have if he can cure Ferdinand,” said the mother “Telegraph to him at once At the worst he can do no harm ”

So the great Italian was sent for, and mother and daughter went to prepare the blind man for his coming

“What—another ! ” exclaimed Ferdinand, with a rueful laugh “I thought I had come to an end of them.”

But when, after a fortnight, Pereira arrived, he gave himself into the wonder-worker's hands with imperturbable, meek fortitude

"I think," said Pereira, after the preliminary examination, "that there is a possibility—a good possibility" Then he plunged into a scientific dissertation, in which such terms as "sclerotic coat," "choroid coat," "canal of Schlemm," "tarsal cartilage," and many other like cryptic sayings figured again and again, with a maddening reiteration But for all this the Italian bore upon him the stamp of competence He did not boast or prophesy He was not too confident of success "You will pardon me," he wound up, "but I should judge you to be a man who could bear to be told the truth about your case?"

"I think that is so," said Ferdinand

"You could bear a great disappointment?"

"I have weathered a good many Yes"

"Then," said the doctor, "I may tell you that, though I believe I can restore your sight, and that I can restore it permanently——"

He hesitated

"Yes?" prompted Ferdinand

"There is—I will not disguise the fact from you—a bare likelihood of my cures being only temporary You see——" and again he plunged headlong into a fresh dissertation "You will regain your sight of that I am almost certain," he concluded, "but it may be for only a little while Could you bear that?"

"It would be hard," replied Ferdinand "But I think I could bear even that"

"You understand perfectly?" urged the Italian "You realize what a temporary restoration of sight would mean to you? As you are now, the full meaning of your deprivation is not apparent to you You have, to all intents and purposes, never had the use of your eyes at all But if you were suddenly made to see, perhaps only for a few hours, or it might be only for a few minutes, and then became blind, incurably blind, again——"

He lapsed into eloquent silence

"I am willing to take any conceivable risk you can name," Ferdinand declared, "so long as there is a reasonable chance of success"

"There is a very excellent chance," Pereira assured him, "if you will consent to obey me implicitly in all things"

"That you may rely upon"

Thus the matter was settled. The Italian doctor took up his quarters in the house, and forthwith began his treatment.

The processes of the cure were involved and excruciatingly painful as well as tediously slow in their results. For six weeks Ferdinand was condemned to lie on his back in a darkened room, his eyelids covered with plaster, his brows wrapped in thick layers of wet bandages. He was put upon a rigorous diet and forbidden exercise. But he bore the long suspense, the enervating inaction, the interminable days of empty quiescence, with the ensuing nights of sleeplessness, with high courage and long-suffering equanimity. In all respects he was an exemplary patient. He did not once complain, he did not once try to force the doctor's hand by demanding to know when he might expect this cruel ordeal to end. Never had the fine texture of the man's soul manifested itself so nobly as during that stupefying period of probation.

It was on the last day of the sixth week that Pereira shot his alarming bolt into that riven household. He did not appear as usual at breakfast. A maid, sent up to his room with a cup of tea, came fluttering downstairs, after a brief absence, with devastating tidings. The doctor was gone. He had packed his trunk with his own hands, and must himself have carried it to the station.

Mother and daughter, the blood slowly draining away from their faces, gazed mutely at each other across the table, heart-sick and stunned by the weight of this calamity, too deeply stirred by their emotions to exchange a word. Was this, then, to be the end of their fond dreams?

"I found this letter," said the maid, and laid it down beside the mother's plate.

But the world was rocking and spinning before the poor lady's clouded eyes. At last she controlled herself sufficiently to pick up the letter and open it. Then her eyes were flushed with bitter tears, she could not decipher the hurried scrawl. In silence she handed it to her daughter.

"Read it, dear," she said thickly.

The girl, who suffered scarcely less than her mother, read it aloud. Doctor Pereira had the grace to be ashamed of himself. His letter of farewell began with florid apologies. He was desolated, he said, by the necessity that confronted him. His duty to himself, however, his best interests, demanded that he should leave them. A

South American millionaire had offered him two hundred and fifty thousand dollars, or more, if he sticled for it, to cross the sea and undertake the cure of his son, who was fast becoming blind. But he must come at once, if the young man's reason were to be saved. *At once!* The young man's impending blindness, Pereira went on to explain, was due merely to a superficial injury to the optic nerve, an injury that could be quite easily repaired, as Pereira had been able to deduce from a Brazilian oculist's diagnosis. In the circumstances, therefore, asked the Italian, how could he be blamed if he refused to forgo this golden opportunity of making his fortune at one single stroke? Moreover, there was really nothing left for him to do in Ferdinand's case which could not be done as well and as efficiently by Ferdinand himself. So soon as the last application of plaster had crumbled away the bandages might safely be removed, and if Ferdinand were ever to have his sight restored to him at all, it would be restored to him then. There followed a few general, precise instructions, and finally a solemn repetition of the Italian's insistent warning that after all the cure might be only temporary.

The two women gained heart as they read. Hope, then, was not dead even yet. Ferdinand might still see. Buoyed and fortified by this reassurance, they went together to the blind man's room to break to him as gently as possible the news of the doctor's flight.

He lay very still, listening.

"Ah, there can be no doubt now, I think, that the man is a charlatan," he remarked placidly. "But I will not utterly condemn him until I know. It means only a few more days of waiting."

They were weary, dreary days, those last days of martyrdom. Slowly, morsel by morsel, the burning plaster flaked away. Pereira had laid stress on one particular: the bandages must on no account be removed until the last infinitesimal grain of plaster had become detached from the eyelids.

Five agonizing days in all spun their slow coil of hours about the hearts of the three protagonists in this piteous drama before the hour of the blind man's emancipation dawned: the hour that was to make him free of humanity's dearest heritage, or to cast him out of the kingdom of light and beauty forever.

When the supreme moment at last arrived it found him hesitating. In his own despite a panic fear, a craven dread of the unknown future that confronted him, stayed his hand from the bandages. How would



he bear the shock of beholding, for the first time, the wondrous world of men, or the worse shock of knowing that he never would behold it?

The women, marvelling at his inexplicable hesitation, waited impatiently beside him

"No," he gasped "I dare not I—I am afraid, mother Ah, perhaps it would have been better if I had not engaged in this hazardous experiment I was happy before, almost happy, I think, at any rate But, if it is still to be nothing but darkness for me, after all this, I shall never be happy again "

His mother laid her hand soothingly on his head He caught it and kissed it

"It is this," he cried, patting her hand, "that undoes me It is you, mother, and Emily who sap my manhood " He hung his head and pondered "How can I tell how this thing will take me now?" he muttered moodily, speaking as if to himself "Do you faintly realize, either of you, what it means to me? You cannot. How could you? I have heard you talk of the birds and the flowers, of colours, of things moving, of little children, of sun and moon and stars and sky, of the sea Ah, but I can smell the old familiar sea and hear its voice I think I should never be afraid of the sea! Oh, but, mother—think!" He shuddered down into his chair "I may not be able to bear it But if I am to bear it, as a man should," he continued in firmer tones, after a pause, "I will choose to bear it alone "

"Alone!" they echoed in concert

"Why not? One prays best alone One is nearest God when one is alone Therefore I elect to be alone," said he "I prayed awhile ago And this inspiration is my answer It is ordained that alone I should undergo this ordeal Yes—yes," he added softly, "it is best And I am set on it, mother, Emily I can see now that that is the only possible way for me to meet this trial of my mettle "

Though they clung to him and wept and cried out that this could not be, and implored him not to send them away, he was inexorable in his resolve Neither their tears nor their passionate supplications could move him

"I will be alone," he repeated doggedly "I will be alone for so long as it takes me to prepare myself to see your dear faces for the first time. You must not enter until I bid you You must not try

to open the door I shall lock it You must wait—think how I have waited—until I call you ! ”

“ But, Ferdinand——” pleaded his mother

“ Mother,” he answered, with a note of sternness in his voice, “ would you have me shamed before you in my own eyes ? What if I cry, if I whine ? Should I desire any one, least of all those who love me, to be witnesses of my humiliation ? No I will be alone This interview is trying us all too hardly as it is Let us end it We may want all our strength presently ”

So accustomed were they to bend to his will that they did leave him at last, even as he bade them He followed them to the door and closed it upon them, and turned the key

“ Remember ! Not till I summon you,” were his last words as they passed out

And when, at length, he was alone, he began at once to pluck at the bandages But his fingers trembled and his hands were weak, so that he could hardly undo the fastenings at first He groaned with impatience he who had been patient for a quarter of a century He struck his head against a piece of furniture in his struggles and whimpered aloud at the pain like a child, though he had long schooled himself to bear such trivial hurts with stoical indifference

At last he tore the bandages free

Then a half-stifled scream broke from him

He could see !

His eyelids, woefully stiff and sore, seemed to move up and down creakily But he saw—*he saw* ! Of that one glorious bewildering fact there could be no doubt whatever He saw !

What he saw was but a pale mist, at first, in which vague grey patches floated slowly, amorphous and large Then, as his vision cleared, the patches grew more distinct, coalesced, took on form and substance, became sharply outlined, resolved themselves into tangible objects

He reeled, staggered, stretched out his hands wildly to ward off the manifold perils that seemed to menace him on every side, then fell upon a low settee in the bay of the window There he huddled, trembling

His terror was extreme He was, as he had dreaded, desperately afraid His impulse was to rush to the door—but of the many wonders that surrounded him which was a door ?—and to batter upon it with

his hands and shriek aloud for his women-folk to come to him. He might have given way to that impulse, and thus have smirched his self-respect for all time, had not an overpowering numbness in all his limbs and members chained him down to the seat whereon he had fallen. As it was, he could do nothing but sit and gaze and listen to the thrashing of the blood through his veins and the wild, tumultuous hammering of his heart.

It was a still, grey day. Sea and sky alike were grey. Only a triangular segment of beach, and that all grey sand, sullied and trampled, was visible from the window. A ship under full sail passed across his field of vision. He wondered what it could be. Was it a bird? Then he saw a covey of gulls, black specks against the dull, drab sky. No, those were birds, he decided. But that white, floating, pitching thing? What was that? He had all a book-lover's theoretical knowledge of ships, a blind book-lover's knowledge, but he failed to recognise that schooner for a ship at all, though in fancy he had often lain out on the yards in a bucketing squall to shorten sail.

This moment of unique revelation contained within its brief compass the story of the dislocation of a man's whole world.

His fears were fast abating. His numbness had left him. But now he had no desire to summon his women-folk to his side. He was lapped in a warm apathy of sensuous bliss. His brain was sluggish. He had little power of thought. He could not correlate his first impressions, nor could he, ever after, describe them.

A newspaper, caught by a gust of wind, curved across his view. Was that a man? he wondered. The sound of the wavelets, cringing into creamy foam on the sands as the tide crept in, came plainly to his ears. So he discovered the sea. But did the sea consist of only that breaking line of feathery white spume? Or did the sea include all that vast tumbled expanse which rose up and merged into the purple distance, and then changed colour and arched forward till it filled all the upper reaches of the world with a sullen, opalescent haze?

A spindling figure, the figure of a half-grown boy, darted across the segment of sand and disappeared. Was *that* a man? He found himself trembling again.

He had no definite conception of a mirror. And even had he desired to consult one he could not have done so, for among Pereira's

general instructions to the women was one in particular on which he laid extraordinary stress they must not let Ferdinand see a mirror for quite a long time, not until he had grown thoroughly well used to his new-found sense of sight, and had learned to measure distances and to understand something of the principles of refraction He, Pereira, had known men go mad at their first sight of a mirror But one wonders if he could have seen himself!

Thus an hour passed

Then the mother, her anxiety triumphing over all other considerations, stole to his door and knocked softly He heard the knock He knew its meaning So that was the door, then He scrutinised it curiously as his first conscious discovery His mother knocked again, and he found his voice

"Not yet," he called out "I am all right I can see" He heard her utter a rapturous cry "But—not yet"

Then, as she went away and her footsteps dwindled, he rose cautiously and stood erect But he found it impossible to maintain his balance He fell forward on his hands and knees, crawled back to the sofa, and crouched there in the cold clutch of a new fear

The fear passed once more He had thought it all out beforehand, and now he was no longer dismayed So long as he stayed there he was safe His sanity began to laugh at his tremors He was clinging to sanity desperately now A man less well-balanced might have succumbed to the influence of his fantastic experiences But he held firmly to the knowledge that one moment of self-betrayal at that crisis of his life might condemn him to a future of mental blindness even more terrible than the doom of physical blindness from which he had so mercifully been delivered

And, gently as the dew forms on the sun-parched blossoms, so a cooling peace descended upon him He began to thrill with the beginnings of a full consciousness of the magnitude of the miracle which had been wrought

His temples throbbed, his palate was dry as tinder, his breath issued whistling through his teeth, his lungs seemed to rattle in his breast

Again his mother knocked at the door And again he called out: "No—presently"

He heard her murmur his name with infinite longing, but he knew that the time was not yet ripe for him to behold her. He dared not

yet court the shock of joy that the first sight of his beautiful, beloved mother must provoke.

Once more he gazed out upon sea and sky.

Nearly two hours of self-communion had passed. The first affrighting keenness of his new-born perceptions was a little blunted. He sank back among the cushions in a languorous mood of exaltation that hung his will in fetters. Twice more had his mother knocked at the door, and each time he had sent her away, inexorably, as before. And each time she had obeyed him more reluctantly. On the last occasion she had reproached him with his cruelty.

"Next time," he said to himself, and smiled fondly.

Then the smile was struck from his face as by a blow.

What was this?

He raised his hands to his eyes and rubbed them—gently, for they still ached and burned. He sat up sharply and stared out with a startled fixity of gaze at the scene outspread before him. Was it possible that his blindness was returning? He closed his inflamed eyelids and opened them again. The uniform greyness of sea and sky seemed to have grown duller in hue. The outlines of things were becoming blurred and indistinct. He had no doubt of it now. Awhile ago he had been able clearly to discern the shape of a bunch of green weed on the sands. Now it had lost all colour and form, it was no more than a vague patch on the darkening expanse. And the tumbling waves! He had been able to follow their monotonous rise and fall, their lolling advance and their sudden collapse into foam upon the beach. But now—

He sank back and lay quite still, his eyes ranging restlessly round the room. The patterns of the wall-paper and the carpet, the tapestry hanging on the door, the pictures, the ceiling, the furniture, all were imperceptibly fading into a misty nebosity before his eyes.

And then he recalled how the Italian had warned him that his sight might be restored only temporarily. "Perhaps for a few hours, perhaps for only a few minutes." He had forgotten that dire possibility in the first exuberance of his joy. Now the deadly truth encompassed him like a bleak, black cloud, putting all his hopes to death, banishing all his dreams of a radiant future. He must go back into the darkness again! He must return to the valley of impenetrable shadow! This glimpse of a world—and an end forever! This brief

revelation of the wonder and the mystery of earth, and then the pitiless dark once more, to cover him until death !

Even as he lay and writhed and sickened in torment the light of his eyes failed faster and faster

Then the deeps of this strong man's soul were broken up, and he poured forth curses on the unspeakable malignity of an evil fate that had mocked him with this foretaste of a perfected life, only to snatch it away from him in the very moment of fruition

He uttered a great cry, and rose, and groped his way—once more moving confidently in familiar, ever-deepening darkness—towards the door He turned the key and flung the door wide, and the voice of his agony echoed through the palpitating silence Then he swooned and fell

When he regained consciousness he thought that surely he had passed through the gateless barrier and had attained to a world beyond the grave For it seemed that he could see once more, but not as he had first learned to see A soft, golden glow, a new, mellow effulgence filled the air His mother's face, which he only visualised as an apparition of terrifying aspect, hung over him

" You can see me, dear ? "

" Yes Now that I am dead I can see clearly again," he answered She stooped and kissed him

" Dear Ferdinand ! " she murmured " You are alive You are still in the dear old world You are—no, no, you must not question us, but believe what we say—it is only—we should have prepared you—but how could we foresee ? "

" I thought I saw," he murmured " It was a vision, I suppose And then the blindness returned "

" No," she cried " You still have your sight "

" And you will always have it in future," broke in the voice of Wyman from behind him

" Yes," continued the mother " You will always be able to see now It was not the blindness that returned How can I make you understand ? It was growing late The light always fades away, in that way, as night comes on It was only what we call—getting dark, dear "

But many hours elapsed ere he understood, even imperfectly.

JOHN MASEFIELD

B. 1875

## THE YARN OF HAPPY JACK

**I** ONCE knew an old Norwegian sailor, one of the mildest and kindest of men, who attracted me strangely—partly because he was mild and kind, but partly, alas! because he had committed murder. I cannot remember that the crime weighed heavily upon him. He spoke of it frankly, as one would allude to a love affair or to the taking of a drink. It was an incident in life. It was part of a day's work. That it was exceptional and reprehensible not one of his friends, I am convinced, imagined.

We made a voyage together, that old Norwegian and I. We were in the same watch, and did very much the same duty. I was very young and green at that time, and he, an old man, a leader in the fore-castle, dignified further by poetical circumstances, befriended me in many ways. We used to yarn together in the night watches, under the break of the poop, while the rest of the watch snored heavily in the shadows.

"Hanssen," I asked him one night, "who was Davy Jones?" "Ah, come off your Davy Jones!" said the boatswain, interrupting. "Look out he don't get you by the leg." I repeated my question. "Davy Jones," said the old man. "I don't know, b' Joe, who Davy Jones was. I know his locker though, b' gee." This was a jest. "Just the sea?" I asked. "Dat's one of 'em, b' gee." "And what's the other?" "You want to know too much, you do," said the boatswain, interrupting us a second time, "you and your Davy Joneses. You're like a Welshman at a fair. 'Who trowned the tuck, Dafy Chones.' Come off with you and give us a breeze." "The other one," said the old man, "it's up in the sky, b' gee." "Is it a sea too?" I asked. "Of course it is. Didn't you never read your Bible?" "Why, yes, but—" "Well, then, don't you know about the waters above the firm-ment and the waters that are under the firm-ment?" "If you're going to talk Latin," said the boatswain, "I'm sheering off. I'll not rouse no head winds by listenin' to you. Bloody Latin they're talking, them two," he added, to the third mate, as he walked away.

" They ought to have been rooks, they'd ought "—by rooks meaning folk in Holy orders

After he had gone I got the old man to give me the whole story. He told me that up above, in the sky, there was another sea, of a kind different from our sea, but still fit to carry ships, and much sailed upon by the people of the sky. He told me that the ships were sometimes seen in the air—having perhaps heard from some Greek or Italian of the *fata Morgana*, a sort of mirage, which does verily reflect ships in the sky, though I believe upside down. He said that he himself had never seen it, but that it was well known how the anchors from this upper sea carried away chimneys and steeples and broke through roofs in European villages. Such accidents were rather more common in the hills, he added, because the hills made the upper sea shallow. In the valleys, where most big towns are, the water is too deep, and the sky ships do not anchor.

" One time," he said, " there was a sailor. His name, b' gee, was Happy Jack, and he was a big man and a sailor (i.e. he was strong of his body and a good seaman). One time Happy Jack got paid off and he tink he go home. So he go along a road, and by and by he come to a town, and he found all hands standing in a field looking up. In the middle of the field there was an anchor, and it was like red-hot gold, and the fluke of it was fast in the ground. It was fast to a cable which went up and up into the sky, so far that you couldn't see the end of it. A great nine-stranded cable it was, with every bit of it shining like gold. It was all laid up of golden rope-yarns. It was a sight to see, that cable and the anchor was. So by and by the parson of the village sings out to get an axe and cut it through, so that they should have the anchor and a bit of cable to buy new clothes for the poor. So a man goes and comes back with an axe, and he cuts a great chop at it, and the cable just shakes a little, but not so much as a rope-yarn carried away. ' You'll never do it that way,' says Happy Jack, ' you must never have seen a cable, the way you shape at it. What is it you want to do, anyway? ' So they said they wanted to get the anchor and the cable to buy new clothes for the poor. ' Well,' says Jack, ' all you got to do is to bury the anchor a fathom deep, and then, when they come to heave in up above, the cable 'll carry away, and I shouldn't wonder if you get ten or twenty fathom of it, whereas if you cut it like you're doing you'll not get more'n three feet ' So they asked Jack to show them how. ' It's as simple as kiss,' he says. ' Get spades ' So they



got spades And then they buried the anchor seven or eight feet deep, with rocks and stuff on the top of it, till it was all covered over like it had a house on top So when they'd done that, Happy Jack thinks he'd earned a supper And the parson says, ' You must be thirsty after all that work ' ' I am thirsty,' he says So the parson takes him into the town, and gives him a bite of bread and shows him where there's a water-butt ' Nothing like water,' he says ' You're right there,' says Jack, ' there isn't ' And so Jack walks out of that town, and back to where the anchor was

" By and by he began to think that the people in the ship up above might be rather more generous So he slung his coat off, and began to shinny up the cable, and he climb a great piece , and at last he see the ship

" And never in his life had he seen a ship the like of that She was built like of white-hot gold, like a ship built out of the sun—a great shining ship Her bows was white and round, like a great white cloud, and the air went swirling past them in thin blue eddies Her ropes were shining, and her blocks were shining, and the sails on her yards were as white as a bow-wash She had her colours flying at her truck—a long golden streamer that seemed to be white-hot like the hull

" Now, as he comes up of the sea like, and gets his foot on the cable and his hand on a bobstay, one of the crowd of that ship leans over the rail and looks at him And he was a queer man, and that's God's truth about him He hadn't not so much as hair on his head, but instead of hair he had great golden flames No smoke, mund you, only flames And he was in a white dress, but the dress was all shining and fiery, and sparks were all over it, b'c he'd been splashed with them So Happy Jack kow-tows to this person, and he says, ' You'll have a foul hawse when you come to heave in They been burying your mud-hook,' he says So the fiery fellow says, ' Well, Happy Jack, suppose you clear the hawse' So Jack slides down the cable and he works all night long, and just as it comes dawn he gets all clear Then he shinnies up and climbs aboard the ship again

" Now, as soon as he come aboard, the fiery fellows go to the capstan and began to sing, and the song they sang would draw the soul out of the body It was slow and sweet, and strong and spirited, all in one And it seemed to Happy Jack that the golden cable was singing too as it came in through the hawse-holes In a few moments the sails were loose and the ship was under way, and she was tearing

through it at the rate of knots All Happy Jack could see was the sails straining, and the ship lying over to it, and the blue air ripping past, and now and then a comet, and a dancing star, and a cloud all red with the sun So the fiery fellow came up to him, and he says, ' You must be thirsty after all that work ' ' I am thirsty,' he says. So the fiery fellow takes him into the cabin—it was all pictures in the cabin, all blue and green—as pretty as you can't tink And he give Happy Jack a great golden apple and a bottle of golden wine And Happy Jack pour out the golden wine and drank it down like it was good for him

“ And the next thing he knew he was lying by the side of the road half a mile from where he lived And he was in a new suit of clothes with shiny buttons—he was all brass-bound like a reefer. And in his hand there was a bag of golden dollars ”

## THREE—FOUR—FIVE!

**N**OT a soul in Moulsey—that is, not a soul who knew them—could at first believe that the Chandlers and the Simpsons had quarrelled. That such close allies could seriously fall out seemed too incredible, and yet it was so. Why, the Simpsons and Chandlers had been more like one family than two families! The children had been brought up together—the girls sharing the expenses of a common boat on the river, the boys being inseparable, the mothers like sisters, the one father leaning on the other for support in every emergency of life. Young Tom Chandler was as good as engaged to Edith Simpson, and, of course, Charlie Simpson was meant for Susan Chandler. Had there been an unpleasantness at the bridge table? Throughout the winter they met at each other's houses for a friendly rubber—on Wednesday at the Chandlers', on Saturday at the Simpsons'. Had some terrible discovery as to the financial position of one family been made by the other? If so, which of them was in Queer Street? Had young Thomas made a row about Edith's behaviour at the Rowing Club ball? Were Susan's eyes opened to Charles's methods of spending his evenings occasionally. How had it happened? Why had the fast-drawn bonds of years and years been severed in a day, and who was to blame?

No one could answer these questions. No one came anywhere near the real solution of the mystery. This was the occasion of the irrevocable breach.

Mrs Simpson and Mrs Chandler were going up to town early one winter morning. Mrs Simpson was a well-preserved, solid matron. Her hair was beginning to turn grey, and there were signs that she might alarmingly increase in bulk before long, but she was still well-favoured and pleasant to look on, and must have been handsome in her day. Mrs Chandler had the advantage in years, and was still slim and wiry. Her black hair, if it, too, were turning to the autumnal grey, was not permitted to betray the circumstance. Her dark eyes were as keen and bright as ever they had been, and there were wonderfully few wrinkles about them—considering that she was the mother of grown-up sons and daughters.

They carried small hand-bags, and were dressed comfortably, but far from showily, in matrons' black. They could both be fine enough when finery was demanded—at afternoon parties or on church parade—but at present they were bound for the Metropolis, strictly on business.

There was a drawn look about their mouths, and a haggard, dry light in their eyes, which spoke of sleeplessness, or the fever of suppressed excitement. As a matter of fact, neither of them had slept well the night before. Tossing and turning on uneasy pillows, their brains throbbing with thoughts of the battle planned for the morrow, whenever a light slumber overcame them, they awakened with a start to a horrible idea that it was late in the morning and that they had missed the 7.30 train.

"No one was up when I came away," said Mrs. Chandler, when at last the train was moving. They had been a quarter of an hour too soon on the cold and almost empty platform, and had found a second-class compartment all to themselves. "I made a cup of tea, and snatched a bit of bread-and-butter. Quite enough!"

"I didn't trouble about the kettle," said Mrs. Simpson, "I saved some cold tea and a couple of oatmeal biscuits. I never can eat when I have a day like this before me."

"No. We can get a bun or a scone somewhere, if you should feel faint. I shall be all right till tea-time."

"If all goes well, we shall be there before the shutters are taken down. I shall go straight to the Indian silks and muslins. That's where the rush will be!"

"I must go to the crockery and glass first. I am bound to match our soup plates—the pale green ones, not the best—and pick up some odd numbers of champagne tumblers first. But I shall hurry after you. You might hold any short lengths that you know I should fancy till I can get to you."

"I will try, dear, but you know how frightfully rough they are. I have had pieces torn to shreds in my hand before now."

"I know. They threatened to have a policeman at each of the remnant counters, and I only wish they would. I had my bonnet knocked right over my eyes, just as I was stretching for the sweetest bit of brocade I ever saw—thirteen yards, at eleven and three, ridiculous!—and, when I could see again, the woman behind me had grabbed it. Oh, dear—oh, dear! I have lost my list. I must have left it on the hall table."

At the sight of her friend fumbling and clutching, with tremulous fingers, inside her Russia leather hand-bag, Mrs Simpson was seized with nervous apprehension, and began to clutch and fumble about her own reticule. It was all right! After turning the contents upside down and sideways without taking anything out, she enjoyed a long-drawn sigh of relief. She had found her pencilled catalogue of requirements.

After that, while the one lady endeavoured to recall the items on the lost leaflet, the other lady read, over and over again, from the paper in her hand, and, above the rattle of the train, nothing was heard from the two pairs of murmuring lips but—"primrose parchment for Emily—the name or initial if possible—wash-leathers if they really go cheap. As many dusters as I can find—chipped decanters—soiled table-linen. Some watered silk from the fire—smoked gloves and short-waisted —s"—and other such fragments. unintelligible to male understandings, yet gravid with meaning to all good-managing matrons.

In spite of a friendly warning, Mrs Simpson would get out of the train at Richmond before it was at rest at the platform, and very nearly sprained her ankle. They had to change across to the Metropolitan Railway here, and, in the foggy and yellow atmosphere, they met a number of other ladies, mostly dressed in black and all with hand-bags and haggard, eager eyes. They looked ghastly and shadowy as they clustered in the fog round the wooden barrier, waiting for the ticket-collector to open the gate and let them through.

The two friends glanced at each other, and Mrs Simpson whispered ominously, "*It will be a fight!*"

Evidently the Thames Valley was mobilising strongly for this first day of the campaign. The great man had sent out his pink proclamation only a week ago, when would-be combatants far and wide were waiting anxiously and wondering what had delayed the expected summons. This was the sale of sales, the annual winter engagement, to which all other battles were as skirmishes or brushes. If you were not in your place when the battle-field opened, you had very little chance of distinguishing yourself. There were, of course, people who believed in the second day, and even the third day; who swore that the real pickings were only to be made after the first flight of vultures had been satisfied, who affirmed that the best things were never scrambled for till the rougher children had been got out of the way, and pointed triumphantly to glorious prizes snatched

from the lucky-bag in the last hours of the last evening But the vast majority believed that "first come, first served" was truly and indeed the order of the sphinx-like and mysterious general, and that the best fighters carried home the heaviest spoil The fight was fierce enough, in all conscience, but the owners of the burning eyes had come out to fight, and already, with a sensation that was by no means unpleasant, they scented the battle afar, and meant to be in the very thick of it

It was, at any rate, very pleasant to be going into the fray with an old campaigner and a cherished and well-tried comrade, thought the two ladies, as they sat squeezed together in the narrow carriage How nice it would be coming back, side by side, when all was over ! How they would exchange notes on the return to-night, fortifying and backing up each other in moments of sudden and sickening fear that they had not, after all, come out of it too well !

The fog hung heavier and heavier, and now and then a fog-signal went off like a gun, suggesting the exchanges on the outside of the battle-field The train would be—was already—late—very late—atrociously and maddeningly late

Thousands of flaring gas-jets, and hundreds of electric lights—great, pallid moons and orange-coloured, glowing stars—were fighting with the fog in the vast emporium From all its halls and passages, broad staircases and extensive saloons, there rose an indescribable perfume of leather and carpets, aromatic woods and fabrics from Japan and the spicy East, acrid-smelling prints and chintzes, and the sour skins of furry animals, together with a heavy steam of hot coffee and newly-baked rolls from the spacious refreshment-room, and this mingled and indescribable perfume was, to the nostrils of the feminine crowds—surging about the counters in every department, thronging, like bees in a swarm or like the football teams of the suburbs in one united scrimmage, round those particular redoubts where the besieged assistants were known to be literally *giving* things away—as the breath of war to the proverbial war-horse

Mrs Simpson and her friend had been fighting for over an hour, and were both considerably flushed and dishevelled They had met in the Mantle and Fur department, and were pausing a moment to recover themselves

In this large and fog-impregnated retreat, with its iron and glass dome, its wire busts and wicker figures, its tall and stately serving-

women, who wore rustling black silk dresses and pyramids of hair on their queen-like heads, its piles of fashionable fur boas, its mountains of jackets and cloaks, and its suspended and tempting mantles, they were sheltered from the fury of the battle that was waging on every side. In here one could appreciate the wonderful hum of voices, and estimate the immense numbers that formed the humming chorus, which sounded strong and ceaseless as the waves of an incoming ocean.

Neither required anything in the mantle line. They were only looking about them, thanks.

"Certainly, madam," said one of the black silk dresses. "This is very soft," she whispered confidentially. "I half think it has been marked down in mistake. At this figure it is considerably less than cost price. They are only from Paris a week ago. I don't think they were meant to be in the sale at all. Forward, please!"

The two old campaigners smiled at one another and sauntered on. It is possible that they were aware of how such managerial mistakes had often been made on previous occasions.

Suddenly Mrs. Simpson stopped, pointing with outstretched hand, as if she had seen a ghost. Following the direction of the pointing hand, Mrs. Chandler instantly saw what had startled her companion. It was a rich blue velvet opera-cloak, trimmed with ostrich and peacock feathers, and lavishly embroidered with jet bugles and beads, and the skirt.

"*Three—four—five!*" the elder lady exclaimed breathlessly, and they both advanced—"three—four—five! That *must* be a mistake, or it's *dirt* cheap!"

"Silk lined!" They were picking at it like birds, by now. "It's so *good* throughout! Cheap at ten guineas I would have said. Look at the velvet! And the feathers! Count the ostrich feathers. Such a bold mixture, but so tasteful. I never liked peacocks before!" and they walked round and round it, retiring several yards sometimes and then running in from opposite directions, and stooping over the trimming, until the crests of their bonnets jammed, and they had to get up and readjust them.

"Emily," said Mrs. Simpson, all at once, "if I had the money to spare, I'd have it. Three—four—five."

"Louisa! So would I. Only I can't—*daren't* do it. Three—four—five."

Just then a black silk dress bore down upon them, whisked the

glorious thing off its wires, hung it about her own graceful shoulders, and sailed up and down in front of a very large woman with a red face and a false fringe. The two friends hung about, fascinated, spell-bound, vibrating in every nerve.

"They say peacock feathers are unlucky, but that's nonsense, of course. Do you think she will take it? You would buy it for Edith, I suppose?"

"No," said Mrs. Simpson, rather shortly, "for myself. But it is no good thinking about it. I *mustn't*."

"For yourself? Oh, I *hardly* think you would like it for yourself. This blue is rather trying for anybody who hasn't the misfortune to be thin, and it is cut so very spare," said Mrs. Chandler, giving the cloak a curious sort of tweak as the shop girl returned.

"Do you think so?" said the elder lady, doubtfully. "They can alter anything here, you know. But it is bright, very bright. No, you are right, I *won't* like it. Besides, I do believe peacock feathers are unlucky—even as few as those. No, it won't do. It would not suit me, even if I could afford it, which I can't."

The girl had replaced the cloak on the wired outline of feminine beauty and grace, and Mrs. Chandler was stooping over its lower folds. Only the back of her neck and her bonnet, still slightly on one side, could be seen as she spoke.

"In that case, if you have made up your mind against it, I really think, if you'll promise to back me up, I will make the plunge and buy it myself."

"I certainly will not back you up," said Mrs. Simpson, surprised into unbecoming loudness of voice, and the back of Mrs. Chandler's neck was suffused with a guilty blush.

"Why not?"

"Why not? Because if either of us buys it, I will buy it. I found it, and it is mine by right, if I want it. This is not like you, Emily. You try to put me off it, and frighten me simply because you want it for yourself. That is deceitful of you."

Of course Mrs. Chandler declared that deceit was, as ever, foreign to her nature. If her friend claimed her right and took it, so be it. If she felt that it would suit her, that with her splendid and luxuriant figure she could carry off the blueness and the spareness together, and face a Moulsey concert audience without any inward misgiving, it was not for Mrs. Chandler to oppose her, whatever the force of her



own opinion But if she did not care to risk the purchase, then Mrs. Chandler would, That was fair enough

But Mrs Simpson was utterly unreasonable It was hers, as between the two, by right of finding, whether she choose to buy it or not. In any case her friend must not, should not, buy it And so the animated discussion went on, and the humming chorus all round waxed stronger and stronger in volume

"I call on you as a friend to leave it alone, Emily," the discoverer said at last "It would be too mean and too unlike you to cut me out in that way"

"Is not that the dog in the manger?" said Mrs Chandler, very heatedly "At any moment somebody may come in and snap it up before our faces—while you stand talking such nonsense It would suit me, and you would look odious in it"

"Your rudeness and unkindness push me over the brink, Emily," said Mrs Simpson, solemnly "I *will* buy it There shall be no dog in the manger about it Three—four—five"

Then Mrs Chandler changed her front She implored her friend to forget her thoughtless words She should *not* go over the brink It would not suit her one little bit, and she should *not* burden herself with a white elephant at three—four—five Neither of them would buy it, since neither of them could really afford it They would leave it there for the next happy discoverer who should come that way

But Mrs Simpson was now resolute to go over the brink, and required a lot of management before she consented to be led away from temptation—away from this soft and enervating shelter, back into the raging centre of the battle

"I could not have believed she would behave like that, or say such rude things I *know* I could carry it off all right!" thought Mrs. Simpson, as she snatched and pushed and elbowed in front of the piles of rainbow-tinted note-paper in the Stationery department

"Odious selfishness! It would just suit me That shopgirl and I were a perfect match in height and everything, and *she* looked splendid in it It would make Louisa look a simple tub—nothing else!" thought Mrs Chandler, very wrathfully, as, with snake-like undulations and rushes, she approached an immense glove tray

Ten minutes later a lady in black was hurrying down the staircase that leads from Ladies and Infants' Underlinen to Cloaks, Capes, and Furs, while another lady in black was advancing through the great door of Boots, Shoes, and Slippers towards the same point They

met in the middle of the carpeted floor, one on each side of the blue velvet cloak. Like the two elders in the apocryphal story, they had parted company under some idle pretence, and, taking circuitous routes, had returned to the object of attraction and temptation.

"I came back just to have one more peep at it," said Mrs Simpson, in confusion. "If only to see whether it was gone yet."

"And I came because I knew you were not to be trusted, and to save you from folly," said Mrs Chandler, putting a bold face upon the doubtful situation.

"Three—four—five!" Mrs Simpson murmured to herself, as once more she permitted herself to be led away. "*Dirt* cheap! It is madness leaving it", and she showed signs of breaking away and returning.

"If it is madness to leave it, and it doesn't suit you, why not let me have it?" said Mrs Chandler, almost dragging her along. "Come—come—you are forgetting everything. Does Mr Simpson wear flannel next his skin? Because I have seen some——"

"Giving them away? Show me where they are."

Then the two ladies went on with the business that had brought them to London. They struggled and bought and carried away their purchases, for fear other strugglers should get possession of them out of the shop people's hands, from counter to counter, from department to department. But in all their struggles, amid the confused sea of bonnets, in the roar of the assembled voices—for, though nobody meant to raise her voice, the general effect was in certain departments an angry roar—they never felt their minds free from one thought. Neither of them would lose sight of the other again until they were both safe in the moving train.

They could *not* trust each other. You see, the friendship of years is a very real thing, and it is absurd to sneer at the feminine notion of honour, but there are limits to everything. The soldier who will succour and stay with his comrade beneath the hail of the enemy's bullets, will cheat him out of his share of the plunder of a hen-roost. There is no stauncher or more loyal friendship than that of two women of mature years, between whom no rivalry of love is ever likely to come. They will do practically anything in the world for each other, but, in the peculiar and inexplicable fever of a draper's winter sale, *their* limits are reached, and treachery is absolutely certain to be practised.

Nobody knew this better than Mrs Simpson and Mrs Chandler. Had there been no obvious cause for suspicion of each other, it would

have naturally occurred to both to keep a watchful eye But now, after what had happened—the first discussion, the meeting, and the angry words—a close guard was indeed necessary.

It occurred to Mrs Simpson that if only Mrs Chandler would get entangled or held in some distant portion of the vast building, she could then safely leave her friend for a brief space, but the lady gave her no such chance of freedom Doubtless she, too, was angry at having to keep guard, and would also have been glad of a short relief

"I am only running up to the Drugs Don't trouble to come I will find you here when I come down," Mrs Simpson would say, when she fancied the opportunity had arrived

"One instant, and I will come too," and Mrs Chandler would clutch her by the arm or hand-bag "Does this match that, or that match this best?"

They met friends or acquaintances, of course, here and there, in the press of the throng, but a hurried nod sufficed for recognition and they would press and push, shoulder to shoulder, in the storming of some strongly-defended place, without exchanging a single word Sometimes, in smoking-rooms and other haunts of men, one hears dark insinuations as to the hours spent by ladies in shopping One hears veiled allusions to the convenience of the great metropolitan bazaars for frivolous appointments or the furtherance of reprehensible flirtations No one who had ever been at one of the great water sales would make such ridiculous suggestions, or hint that the fair sex there congregated were bent on anything but business In all the multitude of buyers there was never a male to be seen, except the perspiring shop-walkers (with the red rosettes), the tails of whose elegant frock-coats were in constant danger of being pulled off by the eager pluckings that claimed attention on every side

The afternoon was wearing on, the fog was creeping in like heavy smoke, the heat was tropical, and still the battle raged The two friends were hot and dusty, dishevelled as to headgear, and, like pack-horses, burdened with parcels Their indomitable courage still sustained them They were unconscious of bodily fatigue, though their legs nearly failed them, and their feet were burning They had eaten nothing since the morning—not even the suggested bun or scone—and yet felt no hunger, though they were yawning woefully from sheer emptiness They were fighting, shoulder to shoulder, in the *mêlée* among the odd lengths of Chinese cretonnes and Japanese muslins when the opportunity that Mrs Simpson had been looking for came

"Pardon me, I have already selected that," said Mrs. Chandler firmly to a lady who had taken possession of the other end of a long strip of flowery curtain

"No, that you didn't Let go, if you please, at once," said the lady with spirit

"Don't think of letting go," said one of the lady's friends "Where's the shop-walker?"

"Hold it! hold it!" cried Mrs Simpson. "I will run for the shop-walker This belongs to my friend, madam Let go at once!" and she darted away

Her keen eye had discovered an ally in the crowd, not two yards off It was a Mrs Rogers, a humble friend—almost a hanger-on—of the Simpson household While her companion was still struggling with the unknown foe over the highly desirable length of stuff so insolently attacked, Mrs Simpson got in touch with Mrs Rogers, opened her bag, gave her money, and, with surprising rapidity, instructed her

"Three—four—five, in large figures You can't mistake it Peacock's and ostrich's Go as fast as you can To be sent to my address Don't delay—like a good creature"

The ally hurried off, and Mrs Simpson pounced on a rosetted assistant and returned to her friend, to find the delicate Oriental fabric hanging in shreds and tatters in her hand, and the enemy vanished

The shop-walker made nothing of the incident (they always had a grand style at this famous house), twirled the stuff—a remnant indeed now—into a bundle, and threw it down behind the counter

"Don't mention it, my dear madam We are accustomed to considerable eagerness and occasional accidents Pass along, ladies! Pass along, if you please, ladies!" and he pointed over their heads to a great, staring proclamation of the proprietor—the mysterious and venerated general—warning non-combatants not to loiter on the field of action There was a light of triumph in Mrs Simpson's haggard eyes as they at last found seats in the tea-room, but Mrs Chandler did not notice it She was utterly worn out with the double duty of fighting for herself and guarding her friend, and had renounced all idea of getting away from her It was not till they rested their aching limbs on the cane chairs that they knew they were dead beat, and nearly fainting from hunger

Their temples throbbed, and the inside of their heads seemed to be opening and shutting with a bang every second, as the train bore

them homeward out of the fog and turmoil of the vast town—out into the purer air of the river valley. It had been a grand day, a memorable day, a never-to-be-forgotten battle, and, while the rhythmical rattle of the wheels seemed to be repeating, "*Three—four—five, three—four—five, three—four—five,*" with the emphasis on the first number, Mrs Simpson told herself that she had triumphed.

What was Mrs Chandler thinking about, and what did the rattle of the wheels appear to her to say, while she sat with closed eyes, pretending to sleep? Were the wheels whispering, "*Three—four—five,*" to her also? If so, she never alluded to those tempting numbers in the few scraps of conversation that passed between the two worn-out comrades-in-arms

BUT, she went up to town next morning by the same 7 30 train, *all by herself*, without a word of explanation to anybody, and returned, before one o'clock, with a brown-paper parcel in her hand

Less than a week after this Mrs Simpson and Mrs Chandler both went to the evening performance of the Moulsey and Hampton Vagrant Histrions. Each hoped against hope, as she entered the hall, that the other would not be there. Each wore a blue velvet opera cloak with a collar of mixed ostrich and peacock feathers. They both flushed crimson, and then turned deadly pale as they met in the reserved seats, but they did not speak, though the two husbands talked across them with boisterous cordiality. They both understood, even in their first surprise, that each had been treacherous to the other, and realised that in all probability the supply of those rich blue cloaks at three—four—five would not fail until the demand for them ceased.

One would have thought no solution of the little difficulty as to who should possess the object of their admiration could have been happier. Each of them had got what each wanted, without robbing her old friend. But they did not see the matter in this light. Everybody noticed the coldness at the performance, and the open and complete breach—the absolute severance of every old tie, the irrevocable separation of the two entire families, who were compelled to obey their commanders—immediately followed. You see, neither Mrs Simpson nor Mrs Chandler could forget that her friend had tried to deceive her, that she had tried to deceive her friend, and that she had deceived herself.

## OLIVER ONIONS

### THE ROCKER

#### I

**T**HERE was little need for the swart gipsies to explain, as they stood knee-deep in the snow round the bailiff of the Abbey Farm, what it was that had sent them. The unbroken whiteness of the uplands told that, and, even as they spoke, there came up the hill the dark figures of the farm men with shovels, on their way to dig out the sheep. In the summer the bailiff would have been the first to call the gipsies vagabonds and roost-robbers, now they had women with them too.

"The hares and foxes were down four days ago, and the liquid-manure pumps like a snow man," the bailiff said. "Yes, you can lie in the laithes and welcome—if you can find 'em. Maybe you'll help us find our sheep too——"

The gipsies had done so. Coming back again, they had had some ado to discover the spot where their three caravans made a hummock of white against a broken wall.

The women—they had four women with them—began that afternoon to weave the mats and baskets they hawked from door to door, and in the forenoon of the following day one of them, the black-haired, soft-voiced queen whom the bailiff had heard called Annabel, set her babe in the sling on her back, tucked a bundle of long cane-loops under her oxter, and trudged down between eight-foot walls of snow to the Abbey Farm. She stood in the latticed porch, dark and handsome against the whiteness, and then, advancing, put her head into the great hall-kitchen.

"Has the lady any chairs for the gipsy woman to mend?" she asked in a soft and insinuating voice.

They brought her the old chairs, she seated herself on a box in the porch, and there she wove the strips of cane in and out, securing each one with a little wooden peg and a tap of her hammer. The child remained in the sling at her back, taking the breast from time to time over her shoulder, and the silver wedding ring could be seen as she whipped the cane back and forth.

As she worked she cast curious glances into the old hall-kitchen. The snow outside cast a pallid, upward light on the heavy ceiling-beams, this was reflected in the polished stone floor, and the children, who at first had shyly stopped their play, seeing the strange woman in the porch—the nearest thing they had seen to gipsies before had been the old itinerant glazier with his frame of glass on his back—resumed it, but still eyed her from time to time. In the ancient walnut chair by the hearth sat the old, old lady who had told them to bring the chairs. Her hair, almost as white as the snow itself, was piled up on her head *à la Marquise*, she was knitting, but now and then she allowed the needle in the little wooden sheath at her waist to lie idle, closed her eyes, and rocked softly in the old walnut chair.

"Ask the woman who is mending the chairs whether she is warm enough there," the old lady said to one of the children, and the child went to the porch with the message.

"Thank you, little missie—thank you, lady dear—Annabel is quite warm," said the soft voice, and the child returned to the play.

It was a childish game of funerals at which the children played. The hand of Death, hovering over the dolls, had singled out Flora, the articulations of whose sawdust body were seams and whose boots were painted on her calves of fibrous plaster. For the greater solemnity the children had made themselves sweeping trains of the garments of their elders, and those with cropped curls had draped their heads with shawls, the fringes of which they had combed out with their fingers to simulate hair—long hair, such as Sabrina, the eldest, had hanging so low down her back that she could almost sit on it. A cylindrical-bodied horse, convertible (which his flat head came out of its socket) into a locomotive, headed the sad *cortège*, then came the defunct Flora, then came Jack, the raffish sailor doll, with other dolls, and the children followed with hushed whisperings.

The youngest of the children passed the high-backed walnut chair in which the old lady sat. She stopped.

"Aunt Rachel—" she whispered, slowly and gravely opening very wide and closing very tight her eyes.

"Yes, dear?"

"Flora's dead!"

The old lady, when she smiled, did so less with her lips than with her faded cheeks. So sweet was her face that you could not help wondering, when you looked on it, how many men had also looked

upon it and loved it    Somehow, you never wondered how many of them had been loved in return

" I'm so sorry, dear," Aunt Rachel, who in reality was a great-aunt, said    " What did she die of this time ? "

" She died of        Brown Titus        'n now she's going to be buried in a grave as little as her bed "

" In a what, dear ? "

" As little        dread    . . as little as my bed . . . you say it, Sabrina "

" She means, Aunt Rachel,

Teach me to live that I may dread  
The Grave as little as my bed,"

Sabrina, the eldest, interpreted.

" Ah !        But won't you play at cheerful things, dears ? "

" Yes, we will, presently, Aunt Rachel , gee up, horse !        Shall we go and ask the chair-woman if she's warm enough ? "

" Do, dears "

Again the message was taken, and this time it seemed as if Annabel, the gipsy, was not warm enough, for she gathered up her loops of cane and brought the chair she was mending a little way into the hall-kitchen itself    She sat down on the square box they used to cover the sewing-machine    " Thank you, lady dear," she murmured, lifting her handsome almond eyes to Aunt Rachel    Aunt Rachel did not see the long, furtive, curious glance    Her own eyes were closed, as if she was tired , her cheeks were smiling , one of them had dropped a little to one shoulder, as it might have dropped had she held in her arms a babe , and she was rocking, softly, slowly, the rocker of the chair making a little regular noise on the polished floor

The gipsy woman beckoned to one of the children

" Tell the lady, when she wakes, that I will tack a strip of felt to the rocker, and then it will make no noise at all," said the low and wheedling voice , and the child retired again

The interment of Flora proceeded

An hour later Flora had taken up the burden of Life again    It was as Angela, the youngest, was chastising her for some offence, that Sabrina, the eldest, looked with wondering eyes on the babe in the gipsy's sling.    She approached on tiptoe

" May I look at it, please ? " she asked timidly

The gipsy set one shoulder forward, and Sabrina put the shawl gently aside, peering at the dusky brown morsel within



"Sometime, perhaps—if I'm very careful—" Sabrina ventured diffidently, "— if I'm *very* careful—may I hold it?"

Before replying, the gipsy once more turned her almond eyes towards Aunt Rachel's chair. Aunt Rachel had been awakened for the conclusion of Flora's funeral, but her eyes were closed again now, and once more her cheek was dropped in that tender suggestive little gesture, and she rocked. But you could see that she was not properly asleep. It was, somehow, less to Sabrina, still peering at the babe in the sling, than to Aunt Rachel, apparently asleep, that the gipsy seemed to reply

"You'll know some day, little missie, that a wean knows its own pair of arms," her seductive voice came

And Aunt Rachel heard. She opened her eyes with a start. The little regular noise of the rocker ceased. She turned her head quickly, tremulously she began to knit again, and, as her eyes rested on the sidelong eyes of the gipsy woman, there was an expression in them that almost resembled fright

## II

They began to deck the great hall-kitchen for Christmas, but the snow still lay thick over hill and valley, and the gipsies' caravans remained by the broken wall where the drifts had overtaken them. Though all the chairs were mended, Annabel still came daily to the farm, sat on the box they used to cover the sewing machine, and wove mats. As she wove them, Aunt Rachel knitted, and from time to time fragments of talk passed between the two women. It was always the white-haired lady who spoke first, and Annabel made all sorts of salutes and obeisances with her eyes before replying

"I have not seen your husband," Aunt Rachel said to Annabel one day. (The children at the other end of the apartment had converted a chest into an altar, and were solemnising the nuptials of the resurrected Flora and Jack, the raffish sailor-doll.)

Annabel made roving play with her eyes. "He is up at the caravans, lady dear," she replied. "Is there anything Annabel can bid him do?"

"Nothing, thank you," said Aunt Rachel

For a minute the gipsy watched Aunt Rachel, and then she got up from the sewing-machine box and crossed the floor. She leaned so close towards her that she had to put up a hand to steady the babe at her back.

"Lady dear," she murmured with irresistible softness, "your husband died, didn't he?"

On Aunt Rachel's finger was a ring, but it was not a wedding ring. It was a hoop of pearls

"I have never had a husband," she said

The gipsy glanced at the ring "Then that is——?"

"That is a betrothal ring," Aunt Rachel replied.

"Ah!" said Annabel

Then, after a minute, she drew still closer Her eyes were fixed on Aunt Rachel's, and the insinuating voice was very low

"Ah! And did it die too, lady dear?"

Again came that quick, half-affrighted look into Aunt Rachel's face Her eyes avoided those of the gipsy, sought them, and avoided them again

"Did what die?" she asked slowly and guardedly

The child at the gipsy's back did not need suck, nevertheless, Annabel's fingers worked at her bosom and she moved the sling As the child settled, Annabel gave Aunt Rachel a long look

"Why do you rock?" she asked slowly

Aunt Rachel was trembling She did not reply In a voice soft as sliding water the gipsy continued

"Lady dear, we are a strange folk to you, and even among us there are those who shuffle the pack of cards and read the palm when silver has been put upon it, knowing nothing But some of us *see*—some of us *see*"

It was more than a minute before Aunt Rachel spoke

"You are a woman, and you have your babe at your breast now . . . Every woman sees the thing you speak of"

But the gipsy shook her head "You speak of seeing with the heart I speak of eyes—these eyes"

Again came a long pause Aunt Rachel had given a little start, but had become quiet again When at last she spoke it was in a voice scarcely audible

"That cannot be I know what you mean, but it cannot be He died on the eve of his wedding For my bridal clothes they made me black garments instead It is long ago, and now I wear neither black nor white, but——" her hands made a gesture. Aunt Rachel always dressed as if to suit a sorrow that Time had deprived of bitterness, in such a tender and fleecy grey as one sees in the mists that lie like lawn over hedgerow and copse early of a midsummer's morning

"Therefore," she resumed, "your heart may see, but your eyes cannot see that which never was."

But there came a sudden note of masterfulness into the gipsy's voice

"With my eyes—*these* eyes," she repeated, pointing to them

Aunt Rachel kept her own eyes obstinately on her knitting needles.

"None except I have seen it. It is not to be seen," she said.

The gipsy sat suddenly erect

"It is not so. Keep still in your chair," she ordered, "and I will tell you when——"

It was a curious thing that followed. As if all the will went out of her, Aunt Rachel sat very still, and presently her hands fluttered and dropped. The gipsy sat with her own hands folded over the mat on her knees. Several minutes passed, then, slowly, once more that sweetest of smiles stole over Aunt Rachel's cheeks. Once more her head dropped. Her hands moved. Noiselessly on the rockers that the gipsy had padded with felt the chair began to rock. Annabel lifted one hand

"*Dovo se li*," she said. "It is there."

Aunt Rachel did not appear to hear her. With that ineffable smile still on her face, she rocked.

Then, after some minutes, there crossed her face such a look as visits the face of one who, waking from sleep, strains his faculties to recapture some blissful and vanishing vision. . .

"*Jal*—it is gone," said the gipsy woman.

Aunt Rachel opened her eyes again. She repeated dully after Annabel

"It is gone."

"Ghosts," the gipsy whispered presently, "are of the dead. Therefore it must have lived."

But again Aunt Rachel shook her head. "It never lived."

"You were young and beautiful?"

Still the shake of the head. "He died on the eve of his wedding. They took my white garments away and gave me black ones. How then could it have lived?"

"Without the kiss, no. But sometimes a woman will lie through her life, and at the graveside still will lie. Tell me the truth."

But they were the same words that Aunt Rachel repeated. "He died on the eve of his wedding, they took away my wedding garments." From her lips a lie could hardly issue. The gipsy's face became grave. . . .

She broke another long silence.

"I believe," she said at last "It is a new kind—but no more wonderful than the other The other I have seen, now I have seen this also Tell me, does it come to any other chair?"

"It was his chair, he died in it," said Aunt Rachel.

"And you—shall you die in it?"

"As God wills"

"Has . . . *other life* . . . visited it long?"

"Many years, but it is always small, it never grows"

"To their mothers babes never grow They remain ever babes . . . None other has ever seen it?"

"Except yourself, none I sit here, presently it creeps into my arms, it is small and warm, I rock, and then . . . it goes"

"Would it come to another chair?"

"I cannot tell I think not It was his chair"

Annabel mused At the other end of the room Flora was now bestowed on Jack, the disreputable sailor The gipsy's eyes rested on the bridal party

"Yet another might see it . . ."

"None has"

"No, but yet The door does not always shut behind us suddenly Perhaps one who has toddled but a step or two over the threshold might, by looking back, catch a glimpse What is the name of the smallest one?"

"Angela"

"That means 'angel' . . . Look, the doll who died yesterday is now being married. It may be that Life has not yet sealed the little one's eyes Will you let Annabel ask her if she sees what it is you hold in your arms?"

Again the voice was soft and wheedling . . .

"No, Annabel," said Aunt Rachel faintly.

"Will you rock again?"

Aunt Rachel made no reply

"Rock . . ." urged the cajoling voice.

But Aunt Rachel only turned the betrothal ring on her finger Over at the altar Jack was leering at his new-made bride, past decency, and little Angela held the wooden horse's head, which had parted from its body

"Rock, and comfort yourself . . ." tempted the voice

Then slowly Aunt Rachel rose from her chair

"No, Annabel," she said gently "You should not have spoken. When the snow melts you will go, and come no more, why then did you speak? It was mine. It was not meant to be seen by another, I no longer want it Please go"

The swarthy woman turned her almond eyes on her once more

"You cannot live without it," she said as she also rose.

And as Jack and his bride left the church on the reheaded horse, Aunt Rachel walked with hanging head from the apartment

### III

Thenceforward, as day followed day, Aunt Rachel rocked no more; and with the packing and partial melting of the snow the gipsies up at the caravans judged it time to be off about their business. It was on the morning of Christmas Eve that they came down in a body to the Abbey Farm to express their thanks to those who had befriended them, but the bailiff was not there. He and the farm men had ceased work, and were down at the church, practising the carols. Only Aunt Rachel sat, still and knitting, in the black walnut chair, and the children played on the floor.

A night in the toy-box had apparently bred discontent between Jack and Flora—or perhaps they sought to keep their countenances before the world, at any rate, they sat on opposite sides of the room, Jack keeping boon company with the lead soldiers, his spouse reposing, her lead-balanced eyes closed, in the broken clockwork motor-car. With the air of performing some vaguely momentous ritual, the children were kissing one another beneath the bunch of mistletoe that hung from the centre beam. In the intervals of kissing they told one another in whispers that Aunt Rachel was not very well, and Angela woke Flora to tell her that Aunt Rachel had Brown Titus also.

"Stay you here, I will give the lady dear our thanks," said Annabel to the group of gipsies gathered about the porch, and she entered the great hall-kitchen. She approached the chair in which Aunt Rachel sat.

There was obeisance in the bend of her body, but command in her long almond eyes, as she spoke.

"Lady dear, you must rock or you cannot live"

Aunt Rachel did not look up from her work.

"Rocking, I should not live long," she replied.

"We are leaving you"

" All leave me "

" Annabel fears she has taken away your comfort "

" Only for a little while    The door closes behind us, but it opens again "

" But for that little time, rock——"

Aunt Rachel shook her head

" No    It is finished    Another has seen            Say good-bye to your companions , they are very welcome to what they have had , and God speed you "

" They thank you, lady dear            Will you not forget that Annabel saw, and rock ? "

" No more "

Annabel stooped and kissed the hand that bore the betrothal hoop of pearls    The other hand Aunt Rachel placed for a moment upon the smoky head of the babe in the sling    It trembled as it rested there, but the tremor passed, and Annabel, turning once at the porch, gave her a last look    Then she departed with her companions

That afternoon Jack and Flora had shaken down to wedlock as married folk should, and sat together before the board spread with the dolls' tea-things    The pallid light in the great hall-kitchen faded , the candles were lighted , and then the children, first borrowing the stockings of their elders to hang at the bed's foot, were packed off early—for it was the custom to bring them down again at midnight for the carols    Aunt Rachel had their good-night kisses, not as she had them every night, but with the special ceremony of the mistletoe

Other folk, grown folk, sat with Aunt Rachel that evening , but the old walnut chair did not move upon its rockers    There was merry talk, but Aunt Rachel took no part in it    The board was spread with ale and cheese and spiced loaf for the carol-singers , and the time drew near for their coming

When at midnight, faintly on the air from the church below, there came the chiming of Christmas morning, all bestirred themselves

" They'll be here in a few minutes," they said , " somebody go and bring the children down " , and within a very little while subdued noises were heard outside, and the lifting of the latch of the yard gate    The children were in their nightgowns, hardly fully awake , a low voice outside was heard giving orders , and then there arose on the night the carol

" Hush ! " they said to the wondering children , " listen ! . . "

It was the Cherry Tree Carol that rose outside, of how sweet Mary,

the Queen of Galilee, besought Joseph to pluck the cherries for her Babe, and Joseph refused, and the voices of the singers, that had begun hesitatingly, grew strong and loud and free.

"and Joseph wouldn't pluck the cherries," somebody was whispering to the tiny Angela

Mary said to Cherry Tree,  
"Bow down to my knee,  
That I may pluck cherries  
For my Babe and me,"

the carollers sang, and "Now listen, darling," the one who held Angela murmured

The uppermost spray then  
Bowed down to her knee,  
"Thus you may see, Joseph,  
These cherries are for me"

"O, eat your cherries, Mary,  
Give them your Babe now,  
O, eat your cherries, Mary,  
That grew upon the bough"

The little Angela, within the arms that held her, murmured, "It's the gipsies, isn't it, mother?"

"No, darling The gipsies have gone It's the carol-singers, singing because Jesus was born"

"But, mother it is the gipsies, isn't it? . 'Cos look ."

"Look where?"

"At Aunt Rachel, mother The gipsy woman wouldn't go without her little baby, would she?"

"No, she wouldn't do that"

"Then has she *lent* it to Aunt Rachel, like I lend my new toys sometimes?"

The mother glanced across at Aunt Rachel, and then gathered the nightgowned figure more closely.

"The darling's only half awake," she murmured. . . . "Poor Aunt Rachel's sleepy too"

Aunt Rachel, her head dropped, her hands lightly folded as if about some shape that none saw but herself, her face again ineffable with that sweet and peaceful smile, was once more rocking softly in her chair.

PERCEVAL GIBBON

B 1879

## THE KING OF THE BABOONS

**T**HE old yellow-fanged dog-baboon that was chained to a post in the yard had a dangerous trick of throwing stones. He would seize a piece of rock in two hands, stand erect and whirl round on his heels till momentum was obtained, and then—let go. The missile would fly like a bullet, and woe betide any one who stood in its way. The performance precluded any kind of aim, the stone was hurled off at any chance tangent and it was bad luck rather than any kind of malice that guided one three-pound boulder through the window, across the kitchen, and into a portrait of Judas de Beer which hung on the wall not half-a-dozen feet from the slumbering Vrouw Grobelaar.

She bounced from her chair and ballooned to the door with a silent swift agility most surprising to see in a lady of her generous build, and not a sound did she utter. She was of good veld-bred fighting stock, which never cried out till it was hurt, and there was even something of compassion in her face as Frikkie jumped from the stoep with a twelve-foot thong in his hand. It was, after all, the baboon that suffered most, if his yells were any index to his feelings. Frikkie could smudge a fly ten feet off with just a flick of his whip, and all the tender parts of the accomplished animal came in for ruthless attention.

"He ought to be shot," was Frikkie's remark as he curled up the thong at the end of the discipline. "A baboon is past teaching if he has bad habits. He is more like a man than a beast."

The Vrouw Grobelaar seated herself in the stoep chair which by common consent was reserved for her use, and shook her head.

"Baboons are uncanny things," she answered slowly. "When you shoot them, you can never be quite sure how much murder there is in it. The old story is that some of them have souls and some not and it is quite certain that they can talk when they will. You have heard them crying in the night sometimes. Well, you ask a Kafir what that means. Ask an old wise Kafir, not a young one that has forgotten the wisdom of the black people and learned the foolishness only of the white."



"What does it mean, tante?" It was I that put the question Katje, too, seemed curious

The old lady eyed me gloomily

"If you were a landed Boer instead of a kind of schoolmaster," she replied witheringly, "you would not need to ask such a question But I will tell you A baboon may be wicked—look at that one showing his teeth and cursing—but he is not blind nor a fool He runs about on the hills, and steals and fights and scratches, and all the time he has all the knowledge and twice the strength of a man, if it were not for the tail behind him and the hair on his body So it is natural that sometimes he should be grieved to be such a mean thing as a baboon when he could be a useful kind of man if the men would let him And at nights, particularly, when their troop is in laager and the young ones are on watch among the high rocks, it comes home to the best of them, and they sob and weep like young widows, pretending that they have pains inside so that the others shall not feel offended and turn on them Any one may hear them in the kloofs on a windless night, and, I can tell you, the sound of their sorrow is pitiful"

Katje threw out a suggestion to console them with buckshot, and the Vrouw Grobelaar nodded with meaning

"To hate baboons is well enough in the wife of a Burgher," she said sweetly "I am glad to see there is so much fitness and wifehood about you, since you will naturally spend all your life on farms

Katje's flush was a distress signal First blood to the Vrouw

"Baboons," continued the old lady, "are among a farmer's worst enemies They steal and destroy and menace all the year round, but for all that there are many farmers who will not shoot or trap them And these, you will notice, are always farmers of a ripe age and sense-shaped by experience *They* know, you may be sure My step-sister's first husband, Shadrach van Guelder, shot at baboons once, and was so frightened afterwards that he was afraid to be alone in the dark."

There was a story toward, and now one moved

"There were many Kafirs on his farm, which you have not seen," pursued the Vrouw Grobelaar, adjusting her voice to narrative pitch "It was on the fringe of the Drakensberg, and many spurs of hill, divided by deep kloofs like gashes, descended on to it So plenty of water came down, and the cattle were held from straying by the rocks, on one side at any rate The Kafirs had their kraals dotted all about the land, and as they were of the kind that works, my step-sister's

husband suffered them to remain and grow their little patches of mealies, while they worked for him in between. He was, of course, a cattle Boer, as all of our family have always been, but here were so many Kafirs to be had for nothing, that he soon commenced to plough great spaces of land and sow valuable crops. There was every prospect that he would make very much money out of that farm, for corn always sells, even when cattle are going for only seven pounds a-piece, and Shadrach van Guelder was very cheerful about it.

"But when a farmer weighs an ungrown crop, you will always find that there is something or other he does not take into account. He tells off the weather and the land and the Kafirs and the water on his fingers, and forgets to bend down his thumb to represent God—or something. Shadrach van Guelder lifted up his eyes to the hills from whence came the water, but it was not until the green corn was six inches high that he saw that there came with it baboons. Armies and republics of them, more baboons than he had thought to exist,—they swooped down on his sprouting lands and rioted, ate and rooted, trampled and wantoned, with that kind of bouncing devilishness that not even a Kafir can correctly imitate. In one night they undid all his work on five sown morgen of fat land, and with the first wink of the sun in the east they were back again in their kopjes, leaving devastation and foulness wherever they passed.

"It was my step-sister's husband that stood on one leg and cursed like a Jew. He was wrathful as a Hollander that has been drinking water, and what did not help to make him content was the fact that hardly anything would avail to protect his lands. Once the baboons had tasted the sweetness of the young corn they would come again and again, camping in the kloofs overhead as long as anything remained for them, like a deaf guest. But for all that, he had no notion of leaving them to plunder at their ease. The least one can do with an unwelcome visitor is to make him uncomfortable, and he sent to certain kraals on the farm for two old Kafirs he had remarked who had the appearance of cunning old men.

"They came and squatted before him, squirming and shuffling, as Kafirs do when a white man talks to them. One was quite a common kind of Kafir, gone a little grey with age, a tuft of white wool on his chin, and little patches of it here and there on his head. But the other was a small twisted yellow man, with no hair at all, and eyes like little blots of fire on a charred stick, and his arms were so long and gnarled and lean that he had a bestial look, like a laborious

animal 'The baboons have killed the crop on the lower lands,' said Shadrach, smacking his leg with his sjambok 'If they are not checked, they will destroy all the corn on this farm What is the way to go about it?'

"The little yellow man was biting his lips and turning a straw in his hands, and gave no answer, but the other spoke

" 'I am from Shangaanland,' he said, 'and there, when the baboons plague us, we have a way with them, a good way'

"He sneered sideways at his yellow companion as he spoke, and the look which the latter returned to him was a thing to shrink from.

" 'What is this way?' demanded Shadrach,

" 'You must trap a baboon,' explained the old Kafir 'A leading baboon for choice, who has a lot to say in the government of the troop And then you must skin him, and let him go again The others will travel miles and miles as soon as they see him, and never come back again'

" 'It makes me sick to think of it,' said Shadrach 'Surely you know some other way of scaring them?'

"The old Kafir shook his head slowly, but the yellow man ceased to smile and play with the straw and spoke

" 'I do not believe in that way, baas A Shangaan baboon'—he grinned at his companion—'is more easily frightened than those of the Drakensberg I am of the bushmen, and I know If you lay one of those up yonder, the others will make war, and where one came before, ten will come every night A baboon is not a fat lazy Kafir, one must be careful with him'

" 'How would you drive them away, then?' asked Shadrach

"The yellow man shuffled his hands in the dust, squatting on his heels There! There! See, the baboon in the yard is doing the very same thing

" 'If I were the baas,' said the yellow man, 'I would turn out the young men to walk round the fields at night, with buckets to hit with sticks, and make a noise And I—well, I am of the bushmen'—he scratched himself and smiled emptily.

" 'Yes, yes?' demanded Shadrach. He knew the wonderful ways of the bushmen with some animals

" 'I do not know if anything can be done,' said the yellow man, "but if the baas is willing I can go up to the rocks and try'

" 'How?'

"But he could tell nothing. None of these wizards that have

charms to subdue the beasts can tell you anything about it A Hottentot will smell the air and say what cattle are near, but if you bid him tell you how he does it, he giggles like a fool and is ashamed

“ ‘ I do not know if anything can be done,’ the yellow man repeated ‘ I cannot promise the baas, but I can try ’

“ ‘ Well, try then,’ ordered Shadrach, and went away to make the necessary arrangements to have the young Kafirs in the fields that night

“ They did as he bade, and the noise was loathsome,—enough to frighten anything with an ear in its head The Kafirs did not relish the watch in the dark at first, but when they found that their work was only to thump buckets and howl, they came to do it with zest, and roared and banged till you would have thought a judgment must descend on them The baboons heard it, sure enough, and came down after a while to see what was going on They sat on their rumps outside the circle of Kafirs, as quiet as people in a church, and watched the niggers drumming and capering as though it were a show for their amusement Then they went back, leaving the crops untouched, but pulling all the huts in one kraal to pieces as they passed It was the kraal of the old white-tufted Shangaan, as Shadrach learned afterwards

“ Shadrach was pleased that the row had saved his corn, and next day he gave the twisted yellow man a lump of tobacco The man tucked it into his cheek and smiled, wrinkling his nose and looking at the ground

“ ‘ Did you get speech of the baboons last night among the rocks ? ’ Shadrach asked

‘ The other shook his head, grinning ‘ I am old,’ he said ‘ They pay no attention to me, but I will try again Perhaps, before long, they will listen ’

“ ‘ When they do that,’ said Shadrach, ‘ you shall have five pounds of tobacco and five bottles of dop ’

“ The man was squatting on his heels all this time at Shadrach’s feet, and his hard fingers, like claws, were picking at the ground Now he put out a hand, and began fingering the laces of the farmer’s shoes with a quick fluttering movement that Shadrach saw with a spasm of terror It was so exactly the trick of a baboon, so entirely a thing animal and unhuman

“ ‘ You are more than half a baboon yourself,’ he said ‘ Let go of my leg ! Let go, I say ! Curse you, get away—get away from me ! ’

"The creature had caught his ankle with both hands, the fingers, hard and shovel-ended, pressing into his flesh

" 'Let go !' he cried, and struck at the man with his sjambok

"The man bounded on all fours to evade the blow, but it took him in the flank, and he was human—or Kafir—again in a moment, and rubbed himself and whimpered quite naturally

" 'Let me see no more of your baboon tricks,' stormed Shadrach, the more angry because he had been frightened 'Keep them for your friends among the rocks And now be off to your kraal'

"That night again the Kafirs drummed all about the green corn, and sang in chorus the song which the mountain-Kafirs sing when the new moon shows like a paring from a finger-nail of gold It is a long and very loud song, with stamping of feet every minute, and again the baboons came down to see and listen The Kafirs saw them, many hundreds of humped black shapes, and sang the louder, while the crowd of beasts grew ever denser as fresh parties came down and joined it It was opposite the rocks on which they sat that the singing-men collected, roaring their long verses and clattering on the buckets, doubtless not without some intention to jeer at and flout the baffled baboons, who watched them in such a silence It was drooping now to the pit of night, and things were barely seen as shapes, when from higher up the line, where the guardians of the crops were <sup>spat</sup> er, there came a discord of shrieks

" 'The baboons are through the line,' they cried, and it was on that instant that the great watching army of apes came leaping in a charge on the main force of the Kafirs Oh, but that was a wild, a haunting thing ! Great bull-headed dog baboons, with naked fangs and clutching hands alert for murder, bounding mothers of squealing litters that led their young in a dash to the fight, terrible lean old bitches that made for the men when others went for the corn,—they swooped like a flood of horror on the aghast Kafirs, biting, tearing, bounding through the air like uncouth birds, and in one second the throng of the Kafirs melted before them, and they were among the corn

"Eight men they killed by rending, and of the others, some sixty, there was not one but had his wound—some bite to the bone, some gash, where iron fingers had clutched and torn their way through skin and flesh When they came to Shadrach, and woke him warily with the breathless timidity of beaten men, it was already too late to go with a gun to the cornlands The baboons had contented them-

selves with small plunder after their victory, and withdrew orderly to the hills, and even as Shadrach came to the door of the homestead he saw the last of their marshalled line, black against the sky, moving swiftly towards the kloofs

"He flung out his hands like a man in despair, with never a word to ease his heart, and then the old Shangaan Kafir stood up before him. He had the upper part of his right arm bitten to the bone and worried, and now he cast back the blanket from his shoulder and held out the quivering wound to his master

" 'It was the chief of the baboons that gave me this,' he said, 'and he is a baboon only in the night. He came through the ranks of them bounding like a boulder on a steep hillside, and it was for me that his teeth were bared. So when he hung by his teeth to my arm and tore and snarled, I drew my nails across his back, that the baas should know the truth'

" 'What is this madness?' cried Shadrach

" 'No madness, but simple devilry,' answered the Shangaan, and there came a murmur of support from the Kafirs about him. 'The leader of the baboons is Naqua, and it was he who taught them the trick they played us to-night'

" 'Naqua?' repeated Shadrach, feeling cold and weak

" 'The bushman,' explained the old man. 'The yellow man with the long lean arms who gave false counsel to the baas'

" 'It is true,' came the chorus of the Kafirs. 'It is true, we saw it'

" Shadrach pulled himself together and raised a hand to the lintel of the door to steady himself

" 'Fetch me Naqua!' he ordered, and a pair of them went upon that errand. But they came back empty. Naqua was not at his hut, and none had news of him

" Shadrach dismissed the Kafirs to patch their wounds, and at sun-up he went down to the lands where the eight dead Kafirs still lay among the corn, to see what traces remained of the night's work. He had hoped to find a clue in the tracks, but the feet of the Kafirs and the baboons were so mingled that the ground was dumb, and on the grass of the baboons' return there remained, of course, no sign. He was no fool, my step-sister's first husband, and since a wild and belly-quaking tale was the only one that offered, he was not ready to cast it aside till a better one were found. At any rate it was against Naqua that his preparations were directed.

"He had seven guns in his house for which ammunition could be found, and from among all the Kafirs on the land he chose a half-dozen Zulus, who, as you know, will always rather fight than eat. These were only too ready to face the baboons again, since they were to have guns in their hands, and a kind of ambush was devised. They were to lie among the corn so as to command the flank of the beasts, and Shadrach was to lie in the middle of them, and would give the signal when to commence firing by a shot from his own rifle. There was built, too, a pile of brushwood lying on straw soaked in oil, and this one of them was to put a light to as soon as the shooting began. It was dark when they took their places, and then commenced a long and anxious watch among the corn, when every bush that creaked was an alarm and every small beast of the veld that squealed set hearts to thumping. From where he lay on his stomach, with his rifle before him, Shadrach could see the line of ridge of rocks over which the baboons must come, dark against a sky only just less dark, and with his eyes fixed on this he waited. Afterwards he said that it was not the baboons he waited for, but the yellow man, Naqua, and he had in his head an idea that all the evil and pain that ever was, and all the sin to be, had a home in that bushman. So a man hates an enemy.

"They came at last. Five of them were suddenly seen on the top of the rocks, standing erect and peering round for a trap. But Shadrach and his men lay very still, and soon one of these scouts gave a call, and then was heard the pat! pat! of hard feet as the body of them came up. There was not light enough to tell one from another, except by size, and as they trooped down among the corn Shadrach lay with his finger throbbing on his trigger, peering among them. But he could see nothing except the mass of their bodies, and waiting till the main part of them was past him, so that he could have a shot at them as they came back, should it happen that they retired at once, he thrust forward his rifle, aimed into the brown, and fired.

"Almost in the same instant the rifles of the Zulus spoke, and a crackle of shots ran up and down their line. Then there was a flare of light as the bonfire was lit, and they could see the army of baboons in a fuss of panic dashing to and fro. They fired again and again into the tangle of them, and the beasts commenced to scatter and flee, and Shadrach and his men rose to their full height and shot faster, and the hairy army vanished into the darkness, defeated.

"There was a guffaw of laughter from the Zulus, but ere it was finished a shout from Shadrach brought their rifles leaping up again. The baboons were coming back,—a line of them was breaking from the darkness beyond the range of the fire, racing in great leaps towards the men. As they came into the light they were a sight to terrify a host, all big tuskers, and charging without a sound. Shadrach, aiming by instinct only, dropped two as they came, and the next instant they were upon him. He heard the grunt of the Zulu next him as a huge beast leaped against his chest and bore him down, and there were screams from another. Then something heavy and swift drove at him like a bullet and he clubbed his rifle. As the beast flew, with hands and feet drawn in for the grapple, he hewed at it with the butt and smashed it to the ground. The stock struck on bone, and he felt it crush and fail, and there was the thing at his feet.

"How they broke the charge, with what a frenzy of battle they drove the baboons from them, none of the four who spoke again could ever tell. But it must have been very soon after Shadrach clubbed his rifle that the beasts wavered, were beaten, and fled screaming, and the farmer found himself leaning on his weapon and a great Zulu, shining with sweat, talking to him. 'Never have I had such a fight,' the Zulu was saying, 'and never may I hope for such another. The baas is a great chief. I watched him.'

"Something was picking at Shadrach's boots, and he drew back with a shudder from the form that lay at his feet. 'Bring a stick from the fire,' he ordered. 'I want to see this—this baboon.'

"As the man went, he ran a cartridge into the breach of his rifle, and when the burning stick was brought, he turned over the body with his foot. A yellow face mowed up at him, and pale yellow eyes sparkled dully.

"'Tck!' clicked the Zulu in surprise. 'It is the bushman, Naqua No, baas,' as Shadrach cocked his rifle, 'do not shoot him. Keep him and chain him to a post. He will like that less.'

"'I shoot,' answered Shadrach, and shattered the evil grin that gleamed in the face on the ground with a quick shot.

"And, as I told you, my step-sister's first husband, Shadrach van Guelder, was afraid to be alone in the dark after that night," concluded the Vrouw Grobelaar. "It is ill shooting baboons, Frikkie."

"I'm not afraid," retorted Frikkie, and the baboon in the yard rattled his chain and cursed shrilly.



MAJOR W. P. DRURY

## THE PASSING OF THE FLAGSHIP

"THE best man at a funeral," I observed pessimistically, the wind being E by N, "is the man in the box"

In the little grey hamlet, tucked away under a fold of the great granite tor, a burial had followed closely upon the heels of a wedding, and from the moss-grown churchyard wall Mr Pagett (late private of Marines) and I had moralised on both. As in the big world beyond the purple shadow, the echoes of the bridal peal had mingled with the boom of the passing bell, and not a spade's length from the blossom-strewn path, along which the newly-made bride had tripped but an hour since, the white-headed sexton was stamping down the mould above a dear brother departed.

Mr Pagett indicated the bent figure with his pipe-stem.

"To my mind," said he sententiously, "a gravedigger in his boots is better than an Admiral o' the Fleet in his cawfin any day o' the week. No, sir, you may lay to it that the best man at a funeral is not so much the man in the box as the man who shovels the mud on to it."

I considered the philosopher's proposition with the attention it deserved, while the philosopher, with characteristic absent-mindedness, refilled his pipe from the pouch I had laid beside me for a moment on the wall.

"Besides," he presently resumed, with an air of clinching the argument, "it sometimes 'appens that there's nobody—best man or otherwise—in the bloomin' box at all. I could show you a cemet'ry, for instance, consecrated by a Greek bishop, with mortuary, dead'ouse, or whatnot, all complete, and with three-an'-twenty British graves in its nor'-west-by-westerly corner. Yet, unless my senses played 'anky-panky with my reason one midsummer night——By-the-bye, what's the day o' the month, sir?"

"The twenty-first—as you were—the twenty-second of June."

"It sounds like a coincidence out o' *Bow Bells*," ruminated the ex-private, "but that's not my fault, and I'd kiss the Book to what I'm goan' to tell you. Eight years ago come to-night I saw things

that I won't forget to my dyin' day Mind you, I don't say that they 'appened, I saw them, and that as plain as I see you now I never talk about that night, because the only time I ever did—which was nex' mornin'—I was sent by the skipper's orders to the sick bay, and kep' under observation for a month as a suspected loonatic At the end o' that time they had to return me to dooty, though, since a post-cap'n must never be in the wrong, the staff surjin scrawled 'Alloocination' in red ink on my medical 'istory sheet It is some consolation to think that he was court-martialled six months later for seein' lilac rats on the quarter-deck—but that's neither here nor there. What I want you to onderstand is that the 'alloocination,' if you like to call it so, was as plain to my eyes as Farmer Pearse's funeral was to yours 'alf an hour ago Besides, it stands to reason that I shouldn't be telling you silly fairy tales on the spot where I was christened, an' married, and where I shall some day be clapped under 'atches for my long watch below "

To do him justice I did not suppose he would, though Mr Pagett in serious vein was an entirely new departure In the sanded bar of the "Coach and Horses" in the little village below us, my sea-soldier friend had indeed unfolded to me much unwritten naval and military history But, despite his pointed and frequent reference to sceptics as "lop-eared lepers," I do not think that till now he had ever expected or even desired to be taken seriously On this occasion, however, his *bona fides* was unmistakable Whether the extraordinary phenomenon which he described to me so vividly that afternoon in the little moorland churchyard actually occurred, I leave you to judge That he himself believed so I have not the slightest doubt

"I was in trouble," he began sheepishly, "and the cause o' the trouble was a—well, a Turkish girl at Marmarice "

I shook my head in reproof

"If a sailor's allowed to have a wife in every port," he retorted, "why not his shipmate, the Marine? 'Owever, the Mediterranean Squadron continued its cruise short of a private, who afterwards lost three good-conduc' badges for 'avin' been fooled into breakin' his leave by a woman! "

"' And the man said, the woman——' "

"I know," interrupted Mr Pagett "It's always the same, isn't it, whether they wear aprons o' sewn fig-leaves, or petticoats, or baggy

trousers? Any'ow, the fact remains that there was I, up a blind alley of the Asia Minor coast, in a manner of speakin', with the kit I stood up in, and with no possible means of gettin' back to my ship. As the lady knew no English it didn't matter much what I said, and you can lay to it that I said it!

"Now Marmarice, as you may know, is a large circular bay, all but landlocked, and shut in by pine-covered mountains. At its head, opposite the invisible entrance, is a stinkin' little Turkish town, with the usual crumblin' castle and ramshackle 'ouses behind a lattice-work o' feluccas' masts an' yards. My pockets bein' empty (the lady 'ad seen to that), the honest Turks treated me like a brother, instead of cuttin' my throat, as they would probably otherwise 'ave done, and the Governor promised to send me to Beyrout, or some other Syrian port, where I might pick up the fleet by the first vessel goin' in that direction. But Turkish ships always seem to be lollin' against crazy piers, and the few Greeks that called in at Marmarice—to ask the time apparently—were all bound the other way. I was pretty sorry for myself, you may be certain—especially as every hour's absence meant so much more o' that ridic'ulous Adm'rality scale on my return. But the man I was still sorrier for was the major commandin' my detachment, who, I knew, would sorely miss my valuable corporation an' advice.

"How I dragged through those two or three endless midsun' mer days I ardlly know. I borrowed a rusty flintlock and shot cocknolly birds in the woods, I went out fishin' in a boat that leaked like a sieve, and every evenin' the whole bloomin' town turned up to see me bathe from the end o' the gimcrack pier. At night I smoked cigarettes with the ragged garrison o' the castle, or strolled under the stars with the lady in the baggy trousers, and it was durin' the last o' these walks that I saw the onaccountable thing that I'm goin' to tell you of.

"We'd wandered, me and her, half a mile or so along the foreshore to the left o' the town, until we'd come to what I took to be a private garden belongin' to some pasha or, maybe, the Governor himself. It was within a stone's-throw o' the water's edge, and was surrounded by a trim lime-washed wall, which made the foliage of the cypress trees overtoppin' it seem gloomier than ever. At the far end o' the wall, thirty or forty yards away, I could just make out the bars of a neat wooden gate—in fact, the entire place was so shipshape and

'omelike, after the ramshackle town, that I sat down with my back against the stonework, and lugged out my pipe for a smoke

"The girl seated herself beside me, and, conversation between us bein' impossible, amused herself by throwin' pebbles at the reflections of the stars in the sea. The stars themselves looked more like the little fire-balloons of the southern 'emisphere than 'oles pricked in the sky, and I never remember seein' such a brilliant moonless night anywhere's north o' the equator. The wavy lines o' reflections bordered by the inky mountain shadow 'minded me of a letter wrote on black-edged paper looked at sideways, and I some'ow began to hanker for a companion who could talk sense instead of silly Turkish gibberish

"Now, as I was wishin' (and I've wished it all over the world) that I could 'ave banged the thick skulls of them bickerin' Babel builders together, I chanced to look towards the mountain which masked the harbour entrance, and—the pipe fell from my open mouth. For there, picked out on the velvet shadow, were the electric lights of a great ship, and from the lamp in her fightin'-top I knew her for the flagship. The position-light on her jack-staff showed her to be at anchor, yet, although she was no more than a mile away, and the night was as still as death, I'd heard neither the splash of the big bower nor the tearin' rattle o' the cable through the hawsepipe. Where had my blessed eyes been, I wondered, not to have seen her enter the bay and pick up her present billet!

"None knew better than me the loss I was to my own ship. But I'm nat'rally a modest man, and I must confess that I was a little surprised at the adm'ral himself comin' back for a mere private o' Marines. I should have taken it as a compliment—though a thoroughly well-deserved one, mind you—if he'd sent a destroyer, or even a first-class torpedo-boat. But the flagship! It was the proudest moment of a long an' stainless career."

For a moment the figure on the churchyard wall became Mr Pagett, "our respected fellow-townsmen," vicar's warden, and husband of the buxom Mrs P. It became, in a word, the cardinal virtues amalgamated and personified. With the striking of a match, however it was again the laggard private of Marines dallying with Delilah under the eastern stars.

"I turned to see what the girl made of it, but she was still chuckin' pebbles into the sea, and didn't seem to take the least interest in the flagship's unexpected return. I pointed across the bay, but she only

smiled vacantly, and went on with her stone-throwin' All her interest in the British Fleet was centred (not onnat'rally) in the fine figger of a man at her side

"The electric light shinin' through the long row of messdeck an' cabin scuttles made ragged strokes on the water like a lot of dotted i's scrawled across a slate in quicksilver From the dots in the ship's hull to the wrigglin' tails within a few yards of us, the sea was one big shiverin' fit, and I presently became aware that mixed up with the shivers was a movin' black speck growin' gradually bigger an' bigger After a bit I discovered what it was, namely, one of the flagship's boats She was headin' directly for us

"Now, how in the name o' fortune, I wondered, could the boat's crew have known that I was sittin' in that identical place on the dark beach? But as they got closer in I saw that they were makin' for a spot some forty yards to the left Then the oars were tossed, and a few seconds later the big boat—the pinnace she was—ran her blunt nose noiselessly into the shingle, right opposite the wooden gate in the whitewashed garden wall

"Whether the girl 'ad grown tired by this time of playin' ducks an' drakes in silence, or whether it was nat'ral feminine curiosity, I didn't know, anyway, she suddenly got up, and strolled along the beach in the direction of the boat Then I saw a most wonderful thing I saw a woman pass within a couple o' yards of a boat o' British sailors without so much as turnin' her 'ead to look at them!

"But if she took no notice of the men, the men—sailors, too, of all people in the world!—certainly paid no 'ecd to her It puzzled me why they expected to find me in a lonely garden at that time o' night, but every mother's son of them w - starin' at the gate as if he thought I might slip through the bars like a rat without bein' seen

"Standin' up in the bows o' the boat was a drummer of the Marines, and presently—by order, I suppose, of the orf'cer in command—he raised his bugle to his lips and sounded the long 'Last Post' It's a dismal call at the best o' times, even in the barrick square, with a hundred lighted windows all around you, but, allowin' for the depressin' effect o' that silent bay among the gloomy mountains, there was a wail in the boy's music that I never 'eard before or since, and never want to again It was like an icy finger reckonin' up the knobs upon your spine

"I stood up and shook myself to make sure that I wasn't dreamin' Why on earth had the flagship herself come to fetch me? Why had the pinnace been sent ashore for me instead of a dinghy or skiff? What was the meanin' of that cryin' 'Last Post of Tattoo' on the lonely beach? And then, for the first time, I realised that it wasn't for me that the silent boat's crew were waitin'

"The gate in the wall had swung open, and from the deep shadows o' the garden a little party in fours marched down the beach to the boat. A few paces in rear came another and smaller party, and from the rollin' lurch of the first and the erect 'eads of the second I knew thcm for bluejackets an' Marines respectively. It was the only difference between them, though, for—what was most extr'ordin'ry—every blessed man was dressed in an 'ospital bedgown!

"I was in the act of countin' them—twenty-three they were, all told—when I perceived the girl comin' back over the shingle. I nat'rally expected to see her stop, for the men were right across her path, the first party at the water's edge, the second still marchin' down the beach. Without hesitatin' for a moment, without a glance at either, the girl walked slap between them!

"The mysterious men in the bedgown things havin' been helped over the bows o' the pinnace by their comrades, the entire party set to work with oars and boat'ooks to float her again, and so interested was I in watchin' their efforts that I forgot all about myself till they had pulled a dozen strokes or more from the beach. Then I ran down to the water's edge and hauled them with the full power o' my lungs, but although I continued to shout till I was hoarse and the woods be'ind me were full o' mockin' echoes, the only effect it had was to frighten my Turkish companion, who set off for home as fast as her baggy trousers would let her.

"Mechanic'lly fillin' my pipe, I watched the pinnace till she again dwindled to a black speck among the dancin' reflections, and as I watched I began to ponder on the remarkable silence with which she'd come an' gone. The oars, for some reason or other, must 'ave been muffled, since I'd certainly never 'eard them, nor had I noticed the gratin' of the keel upon the shingle. The men, moreover, as far as I was aware, hadn't spoken a syllable, and though I knew that silence was one of the adm'ral's 'obbies, I'd never dreamt that it could 'ave been brought to such a pitch o' deadliness. If it hadn't been for that hauntin' bugle call, which was still ringin' in my ears, and for the

brilliant lights over yonder against the 'ill, I would have said that I'd been dreamin'

"How long does it take a man to light a well-drawin' pipe—ten or a dozen seconds? As I threw down the match I resumed my gaze across the bay, and—you might have knocked me down with the proverbial feather. Every vestige of electric light and its reflection had vanished! The flagship had left the anchorage as swiftly and silently as she had entered it.

"The next day a Turkish gunboat looked in at Marmarice on her way to the Syrian ports, and the Governor, true to his promise, ordered me a passage in her. Twenty hours later we sighted the British Fleet in Tripoli roads, and by seven bells in the forenoon watch I was on board my own ship again.

"The skipper was weighin' off defaulters on the quarterdeck when I come over the side, and I was marched straight aft and fallen in on the left o' the line. When he'd heard the charge against me, he asked what I had to say, and I told him that, although I'd no excuse for breakin' my leave, I had at all events done my best to get on board the flagship when she had come two nights before into Marmarice.

"The defaulters' book fell with a crash from the colour-sergeant's 'ands to the deck, the major jumped as though he'd been shot, and the skipper looked like a man that sees a ghost.

"Every one, in fact, within hearin' seemed to 'ave had an electric shock.

"'You are quite sure you don't mean the *Royal George*, my lad?' says the skipper kindly, when he'd recovered himself, and then he give orders, as I've already told you, that I was to be taken to the sick bay and kep' under the observation o' the doctor. I began to think that I really was mad.

"On our way for'ard I asked a question. 'I'm noo to the station, as you know, colour-sergeant,' says I, 'and there's things what even I don't savvy. What has the flagship to do with that there garden on the beach at Marmarice,' I says, 'the one to the right o' the town as you face it, with the whitewashed wall and the big wooden gateway?'

"'Garden?' says the colour-sergeant, lookin' me 'ard in the face. 'Well, I suppose you could call it a garden, in a manner o' speakin'. It's the Greek cemet'ry,' he says, 'where three-an'-twenty

o' the flagship's comp'ny were buried after the fever epidemic last summer'

"It was my turn to 'ave electric shocks now

" 'There's three-an'-twenty empty cawfins in that garden,' I says, more to myself than to 'im 'By-the-bye, colour-sergeant, now I come to think of it, I misremember see'ng the flagship when we come into the roads this mornin' Where's she gone to?'

" 'It's 'igh time, my lad,' returns the colour-sergeant solemnlike, 'that you *was* took to the sick bay The flagship was sent to the bottom in seventy-five fathom o' water by the *Ramherdown* on Thursday afternoon, six bloomin' hours before you saw her in Marmarice Bay!'

Mr Pagett thoughtfully knocked the ashes from his pipe against the churchyard wall

"It's my belief," he concluded impressively, "that she returned to Marmarice to complete her complement before settlin' down to her last long commission under the shadow o' Mount Lebanon"



SAX ROHMER

## NARKY

### I

**N**INE times out o' ten—"Old Jack" confided to me—what you see in the noospapers is rot. Same as what you see on the stage. There's more young fellers been led astray by noospapers an' by plays than you'd ever think or imagine. My pal Narky was one of 'em.

Narky was in a small way o' business, but comfortable. Strea-tham was 'is pitch, an' e' mostly stuck to the kitchen lay. If he touched for a leg o' mutton an' a small bitter, with a couple o' dozen decent spoons an' a cruet-stand, 'e was satisfied. 'E never went beyond the kitchen. 'E just 'ad a good square meal, an' nipped out over the garden wall with one or two things easy to carry. 'E'd built up a nice little business, an' kept 'is aged parents in affluent circles. Then 'e made a bloomer.

It was one o' these noo cracksmen plays what 'e went to as done it. A bloke in Narky's line livin' in a swagger bachelor 'lat, an' wearin' evenin'-dress to all 'is meals! 'E used to alway, do 'is business in a fur coat and a opera 'at, smokin' chice Turkish cigarettes costin' 'im, ere, up to a ha'penny a time!

Narky was always romantic, and this 'ere tommy-rot got 'im properly by the gills.

I told 'im plain it was temptin' Providence. I says, "Narky, you've got a nice little business, you've got a nice girl what come of a good family"—'er father was public 'angman at one time—"an' every prospec' of bein' able to settle down comfy in the noospaper an' tobaccer line, an' make a book. Don't be a fool!"

But it wasn't no good. First of all 'e rigged 'isself up as a gent. High 'at, frock-coat, light-brown boots—all complete. 'E spent five shillin's on a beautiful red, knitted weskit, sich as a lord or a well-to-do publican might wear. 'E dons a green silk tie what 'e picked up in Lower Marsh, an' what 'ad probably belonged to a American millionaire or a bookmaker. A pair o' white kid gloves was another

of 'is aristocratic fads 'E got 'em cheap, owin' to one havin' only three fingers complete

When 'e'd got 'em all blowin', with a imitation diamond in 'is green tie an' a umbereller with the case on, I must say Narky looked the real thing 'E wouldn't 'ave been out o' place in Bond Street, or at the National Sportin' Club

When 'e come in 'ere, with 'is ginger moustache waxed an' all 'is armour up, 'e fair took our breath away! Why, the way 'e wore 'is high 'at—tilted well forward an' a bit on one side—was simply Piccadilly! There's no two ways about it, it was Piccadilly!

Digger an' Ikey said they'd go in with 'im if 'e'd got a big thing on So 'e told 'em to spot a likely dook or hearl, an' leave 'im to look after 'er ladyship's hairlooms! We 'ad drinks round, an' Digger an' Ikey went out to see what they could do for 'im

## II

I ain't likely to forgit the night Digger come in with the noos about the Walworth Road pawnbroker—an' 'is lovely daughter As Ikey said "With a lovely woman in the case, it's a cinch for Narky!"

When Digger give us full partics, I could see Narky fancied 'is luck by the way 'e kep' lookin' at 'isself in a lookin'-glass, an' shuftin' 'is high 'at more forward till you couldn't see 'is eyes Anyhow, the end of it was, we all started off for the Walworth Road, me an' Digger an' Ikey, Narky walkin' on the other side of the street

We'd arranged a little plot together Me an' Ikey—what she'd never seen—was to go in an' pop something so as to get a look at the daughter If she come up to Digger's description as regards sportiness, we was to give the wink to Narky

A little dispute cropped up right at the door, owin' to Ikey wantin' to pawn my 'at As I told 'im, it wasn't natural for a old bloke with whiskers an' a bald 'ead to walk into a pawnshop on a cold right an' pawn 'is 'at Not while 'e was sober I pointed out 'ow suspicious it would look, an' suggested Ikey's overcoat There was more trouble about that, an' at last we decided to offer my pipe

If we went, an' there was no sign of the lovely daughter as per Digger, only a 'Ebrew gent We 'ad to say something, so I showed 'im my pipe

It took 'im nearly five minutes to tell us all the kinds of fools 'e

thought we was, an' I kep' suggestin' noo kinds of pass the time  
But still no daughter So we came out, explainin' to the p'liceman  
who'd been sent for that we'd just come 'ome from Chinee, where  
well-coloured pipes like mine was reckoned very vallyble

Well, I wasn't goin' to turn it up, so I suggested we went back  
an' offered somethin' else

Ikey says "It'll 'ave to be your 'at, Jack!" very sad

I says "What about that fourpenny-bit o' yours with a 'ole in  
it? Offer to sell it—for fourpence-ha'penny," I says

So in we goes again, as large as life An' there's the daughter,  
laughin' with 'er father be'ind the counter

Ikey says "'E's tryin' to describe your face to 'er, Jack!"

Before I could think of a proper answer to 'im, we was right inside

"You 'ere again!" shouted the pawnbroker "Get out o' my  
shop, or I'll give you in charge!"

'E was well waxed, but we 'ardly noticed 'im We was that  
struck with 'is daughter No doubt about it, she was a oil paintin'  
A fine girl she was—make two o' me an' Ikey put together—with  
black eyes, an' lovely blue earrings hangin' down on to 'er shoulders  
She 'ad a big gold chain round 'er neck, an' 'er 'ands was so full o'  
diamond rings she couldn't bend 'er fingers Looked a perfect duchess,  
she did

"What are you starin' at?" she says, that saucy, an' showed  
'er beautiful white teeth, with a gold 'un in the left top corner

I felt quite young again, for the moment Then

"What's the matter with you, Father Christmas?" she says  
And I bobbed down

Well, I could see she was right up to Ligger's account, an' was  
regrettin' we 'adn't got Narky outside, when who should butt in but  
'is nubs 'imself! 'E'd got tired of waitin' 'E see 'is chance in a flash

"Is these 'ere men annoyin' you, miss?" 'e says, surprised

I could see from the way she looked at 'im 'e'd made a 'it Ikey  
was smart 'E says "We only come in to pawn somethin',  
guv'nor!"

"Git out o' my shop!" hollered the pawnbroker

"Shall I put these 'ere fellers out, miss?" asks Narky, risin' 'is  
high 'at like a bear!

She just laughed an' looked at 'im the way girls do when they're  
struck An' 'e got 'old of us one in each 'and an' rushed us out the

door Ikey objected to bein' 'andled by 'is ear As 'e said to me outside " I see Narky's move But there wasn't no occasion not whatever for 'im to kop 'old o' *me* by the ear! I shall mention that to Narky! " 'e says

## III

Well, Narky got away with it wonderful 'E started payin' attention to the pawnbroker's daughter, an' used to spend nearly all the evenin' in the shop, talkin' to 'er 'Er father didn't take to 'im, funny enough, but 'e put up with that

'E says to me one night in 'is bedroom in Bream's Mews " I ain't altogether satisfied I can't git 'er to come for a walk with me! " 'e says " She's always got a excuse Still, p'r'aps it's a good job If Loo " (that's 'is girl) " spotted me, there'd be trouble She'd never understand it was business! "

It seemed funny, certainly But as I told 'im, there might be another bloke what she'd jilted for 'im, an' who she didn't want to run into in case Narky got shot

That cheered 'im up wonderful, an' 'e set to work on 'is high 'at with the blackin'-brush in a way as did me good to see When 'e'd got 'em all on ('e was just goin' down to see 'er) 'e looked a fair picture 'E 'ad a pink shirt on, which not only matched 'is red weskit, but set off 'is green tie beautiful And 'e'd bought a nice yaller dahlia for 'is button'ole Digger (as 'ad been in the Militia) suggested as the white glove what 'ad only three fingers would look smarter if 'e pipe-clayed 'is 'ands But that seemed to annoy Narky, so we dropped the subjec'

'E says " Blowed if I don't tap 'er about the safe! I asked 'er to kiss me good-night last night, an' though she didn't, I see 'er laughin' as she dropped the iron shutter! I'm nearly stony! " 'e says. " I shall 'ave to go nap! "

We was all knocked silly that evenin' when he walked in 'ere just before closin' time with a face like a full moon, an' says " Drink up! I'm goin' to touch on Friday night! "

It appears 'e'd got on partic'lar well—unexpected well She'd let 'im 'old 'er 'and over the counter—not 'avin' any rings on that evenin'—an' 'e asked 'er to fly with 'im to lands across the sea

She asked 'im what lands, but 'e couldn't think of any

" Why," she says, " I've just been waitin' an' longin' for this! "

"Eh?" says Narky, 'ardly able to believe 'is ears Fair paralysed 'e said 'e was

"When shall we go, dear?" she asks 'im, very soft

'E drew a deep breath, seein' it was gettin' serious It was now or never!

"Well," 'e says, "I'm rather short o' ready, to put it quite plain to you!" 'e says "To be perfectly open about it, my dear, I'm waitin' for my people to send me a couple of thou or so!" 'e says

"I know where we can get some money to go on with!" she whispers

Narky 'ad a lump in 'is throat like a three'apenny baked pertater 'E'd never dared to 'ope it would be sich a walk over

"Go away now," she says, very soft, bendin' over the counter, "an' don't come 'ere again till Thur—*Friday* night, after closin' time! I'll let you in the side-way an' show you the strong-room!" she says, so low 'e could 'ardly 'ear 'er

We all listened, breathless, while Narky told us, like I'm tellin' you Then Ikey asks

"Was it Friday or *Thursday* she said, Narky? You didn't seem quite sure, some'ow, when you was tellin' us"

"Friday!" answers Narky, very quick An' turnin' to the counter 'e called for drinks all round

We all drank good luck to Friday—joyful Only Ikey—'e ank 'is, too, but kind of moody

Now, 'ere comes the wickedness of 'uman nature

On *Thursday* night, about eleven-thirty, a gen'l'man in a 'igh 'at, carryin' a nice umbereller what 'ad never smelled the rain, an' likewise a large grip, might 'ave been seen comin' out o' Bream's Mews The gen'l'man in the hugh 'at was none other than 'is jills! Narky!

'E walked all the way, an' 'e was actually in Walworth Road when some one claps 'im on the shoulder, an' 'e spins round as if 'e'd been struck by lightnin' It was Ikey! An' 'e was carryin' a big bag, too!

"Narky," 'e says, "I've brought my tools along as well, in case you 'ave any trouble with the safe!" 'e says, smilin' affectionate

Well, Narky was knocked silly for a minute So they slipped into a quiet bar an' 'ad a pick-me-up

Then Narky asks, very faint "Has the others rumbled me?"

"No, Narky," 'e says, "they 'aven't!"

Well, what arrangement they come to, I can't tell you I might

make a guess, but I won't! Only, in the end the pair of 'em crep' up to the pawnbroker's side-door an' knocked gentle. There was no light to be seen in the 'ouse, but almost immediate the girl opened the door. When she see Ikey's face over Narky's shoulder, she give a little scream, which annoyed Ikey considerable.

"It's orlright, Becky!" whispers Narky. "This is my valley!"

Still she 'eld the door, an' seemed as if she couldn't make up 'er mind. Ikey could see she 'adn't expected 'im, an' 'e was thankin' 'is lucky stars 'e'd tumbled to Narky's little game in time.

Well, after Narky 'ad whispered to 'er for a while (Ikey couldn't catch what 'e said), she let 'em both in. Narky whispered to 'im that the pawnbroker was away an' there was nobody else in the 'ouse only a deaf servant.

The girl led 'em along a dim passage, up some stairs, all in the dark, along another passage, an' down some more stairs.

"It's a larger 'ouse than I 'ad supposed, Becky," Narky whispered.

She answered "S-sh! 'Ere it is!"

Before you could say Jack Robinson, Ikey 'ad 'is bag open 'an 'is lantern shinin' on the door. An' it wasn't half a door! Not 'alf it wasn't! An iron door it was, like a bank, an' they could see it was goin' to be a tough job.

"'E's taken the keys away with 'im," whispered Becky, "but p'r'aps your valley knows how to break open doors, Claud?"

"*Claud!*" began Ikey. But Narky stood on 'is favourite corn, brisk, an' 'e stopped—partly to oblige Narky, but principally because the pain took 'is breath away.

Well, the girl gave a kind of little sob—suggestin' to Ikey, who's soft 'earted, that she was tore between love an' dooty—an' whispered "Till to-morrer. Leave no trace—for my sake."

They 'eard 'er skirts switchin', an' she was gone.

#### IV

I've heard a good many blokes tell what 'ard work's like, but I never listened to a more thrillin' narrative than what Ikey told me about this 'ere strong-room door. Even when 'e was tellin' me, the perspiration poured off of him, an' 'e trembled at the knees most pathetic.

For about two hours they went at it every way they knew.

Narky, to begin with, wore 'is high 'at an' 'is frock-coat—also, 'e smoked a cigarette, very cool. But by the end of the first hour's graft 'e'd laid aside the coat, an' likewise the knitted waistcoat. But 'e stuck to 'is high 'at. Only 'e 'adn't got any wind left for smokin'.

As for Ikey, 'e admits as 'is language was shockin'.

They busted all their skeleton-keys, an' they bent a steel crowbar (best Sheffield make) into a ornamental figure eight! But the door 'adn't got a scratch.

They tried to force a bottom 'inge, but Narky only broke 'is silk braces, an' Ikey blame near burst a blood-vessel.

What was to be done? In about another two hours an' a half it would be daylight, an' the bloomin' door, after about eighteen rounds, looked as fresh as paint—while as for Ikey an' Narky, they was blown out.

Narky 'ad a drop o' brandy with 'im, an' they finished it between 'em, an' made a fresh start.

For another clear hour they worked like lunatic stokers, till Ikey felt as 'e was liable to drop dead at any minute. Then 'e chucked down 'is tools, an' leaned up against the bloomin' door, quite dizzy.

'E says "Narky! No 'uman 'and," 'e says, "made this 'ere door. It's the fair limit, it is."

Narky looked at 'im an' then at the door, an' burst into tears. 'E says "Ikey, must we go away broke," 'e says, "with five thousand junmy o'goblins starin' us in the face?"

Ikey says "If you don't 'appen to 'ave 'alf a pound o' dynamite about you, I reckon we must."

Then Narky chucked 'is high 'at on the floor, an' jumped on it.

It was while 'e was a-jumpin' on it th'at 'e 'eard something jangle under 'is foot. Snatchin' up the lantern, 'e shone it into a corner—an' there lay a bunch o' keys!

'E says "Ikey! Ikey!" 'e says, 'usky "Is it too good to be true or am I a-dreamin'?" Can it be," 'e says, almost sobbin'—"can it be as the old gent dropped 'is keys?"

'E took the keys from Ikey—what was white as a ghost—an' began to try 'em on the door.

"It ain't a combination lock," 'e says, in a quiverin' voice, "an' if the right key's 'ere we're made!"

Well, the key was there right enough. Yes, if I never move again off this 'ere stool, the key was there. When Narky fitted it in

the lock, 'e'adn't got the pluck left to turn it 'E come over quite faint. 'E felt like sitting down an' cryin' again—'is 'eart was that full.

At last 'e pulled isselt together, an' turned the key Open come the iron door In nipped poor Narky An' (the wickedness o' the 'uman female 'eart !) found isselt outside in the street, an' right in the arms of a six-foot copper as was waitin' there for 'im !

Can you believe it ? Would you think such a lovely woman could be so wicked disposed ?

To think o' settin' that poor bloke to slave 'is life out through the mortal weary night on a door what opened on the street, an' then get 'im pinched !

Well, Narky was a pal at the finish As 'e felt the bracelets snap on 'is wrist, 'e 'ollered " Run for it, Ikey ! I'm nobbled ! "

So out rushed Ikey, like a whirlwind, dodges the copper—what Narky was keepin' busy , an' flies for 'is life just as the whistle starts

From a top winder 'e 'eard Becky shout " Got 'im, Bob ? "

" I've got the ringleader, Becky dear ! " says the copper " The other one's scooted "

Yes, guv'nor, it is dry work Thank you, I don't mind a final, as it's closin' time O' course, it was a bloomin' plant That wicked woman 'ad rumbled Narky's lay right from the start She got it all laid out for 'im But the unnecessary wickedness o' lettin' 'im spend the night on that bloomin' door ! Whether she nipped down while they was workin', an' planted the keys, or whether they was planted all the time, we never found out Oh, the door was a blessed goods entrance It was faced with wood outside The old boy 'ad been burgled through it once, so 'e 'ad a noo 'un made of iron

It turned out as the six-foot copper was only waitin' to git made sergeant to marry Becky This 'ere smart, single-anded capture just did the trick for 'im nicely

The 'orrible wickedness o' some lovely women passes belief !

Poor Narky tried to do 'er a bit o' no good at 'is trial, but the Bench wouldn't listen to 'im

Ikey got away—yes

No, Narky ain't out yet Good-night, guv'nor !



## ACKNOWLEDGMENTS

To the living authors whose work is included in this volume, thanks are tendered for their courtesy in permitting the reprinting of their copyright stories, and thanks are likewise due to the various publishers who have also given their consent.

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